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A SOLDIER OF THE FIFTEENTH CENTURY.

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View of the State of Europe During the Middle Ages

By

Henry Hallam

With a Critical and Biographical Introduction
by George Lincoln Burr

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CONTENTS

CHAPTER VIII

PAGE

CONSTITUTIONAL HISTORY OF ENGLAND 505

CHAPTER IX

STATE OF SOCIETY IN EUROPE DURING THE MIDDLE AGES . 732

NOTES

CHAPTER I 895
CHAPTER II 928
CHAPTER IV 993
CHAPTER VII 995
CHAPTER VIII 1000
CHAPTER IX 1114

INDEX 1125

38X1084

ILLUSTRATIONS

FACING PAGE

A SOLDIER OF THE FIFTEENTH CENTURY . *Frontispiece*
Photogravure from a painting by Attilio Simonetti

KING OF ARMS SHOWING THE DUKE OF BURGUNDY THE ARMORIAL BEARINGS OF THE CHEVALIERS WHO ARE TO TAKE PART IN A TOURNEY vi
Miniature from the Tournois du Roy René, a manuscript of the fifteenth century, executed from designs of the King René

DEPARTURE OF THE NORMANS TO INVADE ENGLAND . . 530
Photogravure from a painting by Albert Maignan

A TAVERN OF THE MIDDLE AGES 794
Photogravure from a painting by Albert Conrad

THE BURNING OF JOHN HUSS 828
Photogravure from a painting by Carl Gustave Hellquist

AN ANGLO-SAXON PRINCE 1002
Photogravure from a painting by Carl Haag

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VIEW OF THE STATE OF EUROPE DURING THE MIDDLE AGES

CHAPTER VIII

CONSTITUTIONAL HISTORY OF ENGLAND

THE ANGLO-SAXON CONSTITUTION—Sketch of Anglo-Saxon history—Succession to the crown—Orders of men—Thanes and Ceorls—Witenagemot—Judicial system—Division into hundreds—County Court—Trial by jury—Its antiquity investigated—Law of frank-pledge—Its several stages—Question of feudal tenures before the conquest—THE ANGLO-NORMAN CONSTITUTION—Causes of the conquest—Policy and character of William—His tyranny—Introduction of feudal services—Difference between the feudal governments of France and England—Causes of the great power of the first Norman kings—Arbitrary character of their government—Great council—Resistance of the barons to John—Magna Charta—Its principal articles—Reign of Henry III—The constitution acquires a more liberal character—Judicial system of the Anglo-Normans—Curia regis, exchequer, etc.—Establishment of the common law—Its effect in fixing the constitution—Remarks on the limitation of aristocratical privileges in England—THE ENGLISH CONSTITUTION—Reign of Edward I—Confirmatio Chartarum—Constitution of Parliament—The prelates—The temporal peers—Tenure by barony—Its changes—Difficulty of the subject—Origin of representation of the commons—Knights of shires—Their existence doubtfully traced through the reign of Henry III—Question whether representation was confined to tenants in capite discussed—State of English towns at the conquest and afterward—Their progress—Representatives from them summoned to Parliament by the Earl of Leicester—Improbability of an earlier origin—Cases of St. Albans and Barnstaple considered—Parliaments under Edward I—Separation of knights and burgesses from the peers—Edward II—Gradual progress of the authority of Parliament traced through the reigns of Edward III and his successors down to Henry IV—Privilege of Parliament—The early instances of it noticed—Nature of borough representation—Rights of election—Other particulars relative to election—House of Lords—Baronies by tenure—By writ—Nature of the latter discussed—Creation of peers by act of Parliament and by patent—Summons of clergy to Parliament—King's ordinary council—Its judicial and other power—Character of the Plantagenet government—Prerogative—Its excesses—Erroneous views corrected—Testimony of Sir John Fortescue to the freedom of the constitution—Causes of the superior liberty of England considered—State of society in England—Want of police—Villenage—Its gradual extinction—Latter years of Henry VI—Regencies—Instances of them enumerated—Pretensions of the house of York, and War of the Roses—Edward IV—Conclusion.

NO unbiassed observer, who derives pleasure from the welfare of his species, can fail to consider the long and uninterruptedly increasing prosperity of England as the most beautiful phenomenon in the history of mankind. Climates more propitious may impart more largely the mere enjoyments of existence; but in no other region have the benefits that

political institutions can confer been diffused over so extended a population; nor have any people so well reconciled the discordant elements of wealth, order, and liberty. These advantages are surely not owing to the soil of this island, nor to the latitude in which it is placed, but to the spirit of its laws, from which, through various means, the characteristic independence and industriousness of our nation have been derived. The constitution, therefore, of England must be to inquisitive men of all countries, far more to ourselves, an object of superior interest; distinguished especially, as it is, from all free governments of powerful nations which history has recorded, by its manifesting, after the lapse of several centuries, not merely no symptom of irretrievable decay, but a more expansive energy. Comparing long periods of time, it may be justly asserted that the administration of government has progressively become more equitable, and the privileges of the subject more secure; and, though it would be both presumptuous and unwise to express an unlimited confidence as to the durability of liberties which owe their greatest security to the constant suspicion of the people, yet, if we calmly reflect on the present aspect of this country, it will probably appear that whatever perils may threaten our constitution are rather from circumstances altogether unconnected with it than from any intrinsic defects of its own. It will be the object of the ensuing chapter to trace the gradual formation of this system of government. Such an investigation, impartially conducted, will detect errors diametrically opposite; those intended to impose on the populace, which, on account of their palpable absurdity and the ill faith with which they are usually proposed, I have seldom thought it worth while directly to repel; and those which better informed persons are apt to entertain, caught from transient reading and the misrepresentations of late historians, but easily refuted by the genuine testimony of ancient times.

The seven very unequal kingdoms of the Saxon Heptarchy, formed successively out of the countries wrested from the Britons, were originally independent of each other. Several times, however, a powerful sovereign acquired a preponderating influence over his neighbours, marked perhaps by the payment of tribute. Seven are enumerated by Bede as having thus reigned over the whole of Britain; an expression which must be very loosely interpreted.[1] Three kingdoms became at length predominant—those of Wessex, Mercia, and Northumberland. The first rendered tributary the small estates of the southeast, and the second that of the eastern Angles. But Egbert, King of Wessex, not only incorporated with his own monarchy the dependent kingdoms of Kent and Essex, but obtained an acknowledgment of

[1] [Note I.]

his superiority from Mercia and Northumberland; the latter of which, though the most extensive of any Anglo-Saxon state, was too much weakened by its internal divisions to offer any resistance.[2] Still, however, the kingdoms of Mercia, East Anglia, and Northumberland remained under their ancient line of sovereigns; nor did either Egbert or his five immediate successors assume the title of any other crown than Wessex.[3]

The destruction of those minor states was reserved for a different enemy. About the end of the eighth century the northern pirates began to ravage the coast of England. Scandinavia exhibited in that age a very singular condition of society. Her population, continually redundant in those barren regions which gave it birth, was cast out in search of plunder upon the ocean. Those who loved riot rather than famine embarked in large armaments under chiefs of legitimate authority as well as approved valour. Such were the sea-kings, renowned in the stories of the North: the younger branches, commonly, of royal families, who inherited, as it were, the sea for their patrimony. Without any territory but on the bosom of the waves, without any dwelling but their ships, these princely pirates were obeyed by numerous subjects, and intimidated mighty nations.[4] Their invasions of England became continually more formidable: and, as their confidence increased, they began first to winter, and ultimately to form permanent settlements in the country. By their command of the sea, it was easy for them to harass every part of an island presenting such an extent of coast as Britain; the Saxons, after a brave resistance, gradually gave way, and were on the brink of the same servitude or extermination which their own arms had already brought upon the ancient possessors.

From this imminent peril, after the three dependent kingdoms, Mercia, Northumberland, and East Anglia, had been overwhelmed, it was the glory of Alfred to rescue the Anglo-Saxon monarchy. Nothing less than the appearance of a hero so undesponding, so enterprising, and so just, could have prevented the entire conquest of England. Yet he never subdued the Danes, nor became master of the whole kingdom. The Thames, the Lea, the Ouse, and the Roman road called Watling Street, determined the limits of Alfred's dominion.[5] To the northeast of this boundary were spread the invaders, still denominated the armies of East Anglia and Northumberland;[6] a name terribly

[2] "Chronicon Saxonicum," p. 70.

[3] Alfred denominates himself in his will Occidentalium Saxorum rex; and Asserius never gives him any other name. But his son, Edward the Elder, takes the title of Rex Anglorum on his coins. (Vid. "Numismata Anglo-Saxon.," in Hickes's "Thesaurus," vol. ii.)

[4] For these Vikings, or sea-kings, a new and interesting subject, I would refer to Mr. Turner's "History of the Anglo-Saxons," in which valuable work almost every particular that can illustrate our early annals will be found.

[5] Wilkins, "Leges Anglo-Saxon.," p. 47; "Chron. Saxon.," p. 99.

[6] "Chronicon Saxon., passim.

expressive of foreign conquerors, who retained their warlike confederacy, without melting into the mass of their subject population. Three able and active sovereigns, Edward, Athelstan, and Edmund, the successors of Alfred, pursued the course of victory, and not only rendered the English monarchy coextensive with the present limits of England, but asserted at least a supremacy over the bordering nations.[7] Yet even Edgar, the most powerful of the Anglo-Saxon kings, did not venture to interfere with the legal customs of his Danish subjects.[8]

Under this prince, whose rare fortune as well as judicious conduct procured him the surname of Peaceable, the kingdom appears to have reached its zenith of prosperity. But his premature death changed the scene. The minority and feeble character of Ethelred II provoked fresh incursions of our enemies beyond the German Sea. A long series of disasters, and the inexplicable treason of those to whom the public safety was intrusted, overthrew the Saxon line, and established Canute of Denmark upon the throne.

The character of the Scandinavian nations was in some measure changed from what it had been during their first invasions. They had embraced the Christian faith; they were consolidated into great kingdoms; they had lost some of that predatory and ferocious spirit which a religion invented, as it seemed, for pirates had stimulated. Those, too, who had long been settled in England became gradually more assimilated to the natives, whose laws and language were not radically different from their own. Hence the accession of a Danish line of kings produced neither any evil nor any sensible change of polity. But the English still outnumbered their conquerors, and eagerly returned, when an opportunity arrived, to the ancient stock. Edward the Confessor, notwithstanding his Norman favourites, was endeared by the mildness of his character to the English nation, and subsequent miseries gave a kind of posthumous credit to a reign not eminent either for good fortune or wise government.

In a stage of civilization so little advanced as that of the Anglo-Saxons, and under circumstances of such incessant peril, the fortunes of a nation chiefly depend upon the wisdom and valour of its sovereigns. No free people, therefore, would intrust their safety to blind chance, and permit a uniform observance of hereditary succession to prevail against strong public expediency. Accordingly, the Saxons, like most other European nations, while they limited the inheritance of the crown

[7] [Note II.]

[8] Wilkins, "Leges Anglo-Saxon.," p. 83. In 1064, after a revolt of the Northumbrians, Edward the Confessor renewed the laws of Canute. ("Chronic. Saxon.") It seems now to be ascertained, by the comparison of dialects, that the inhabitants from the Humber, or at least the Tyne, to the Firth of Forth, were chiefly Danes.

exclusively to one royal family, were not very scrupulous about its devolution upon the nearest heir. It is an unwarranted assertion of Carte that the rule of the Anglo-Saxon monarchy was "lineal agnatic succession, the blood of the second son having no right until the extinction of that of the eldest." [9] Unquestionably the eldest son of the last king, being of full age, and not manifestly incompetent, was his natural and probable successor; nor is it perhaps certain that he always waited for an election to take upon himself the rights of sovereignty, although the ceremony of coronation, according to the ancient form, appears to imply its necessity. But the public security in those times was thought incompatible with a minor king; and the artificial substitution of a regency, which stricter notions of hereditary right have introduced, had never occurred to so rude a people. Thus, not to mention those instances which the obscure times of the Heptarchy exhibit, Ethelred I, as some say, but certainly Alfred, excluded the progeny of their elder brother from the throne.[10] Alfred, in his testament, dilates upon his own title, which he builds upon a triple foundation, the will of his father, the compact of his brother Ethelred, and the consent of the West Saxon nobility.[11] A similar objection to the government of an infant seems to have rendered Athelstan, notwithstanding his reputed illegitimacy, the public choice upon the death of Edward the Elder. Thus, too, the sons of Edmund I were postponed to their uncle Edred, and, again, preferred to his issue. And happy might it have been for England if this exclusion of infants had always obtained. But upon the death of Edgar the royal family wanted some prince of mature years to prevent the crown from resting upon the head of a child; [12] and hence the minorities of Edward II and Ethelred II led to misfortunes which overwhelmed for a time both the house of Cerdic and the English nation.

The Anglo-Saxon monarchy, during its earlier period, seems to have suffered but little from that insubordination among the superior nobility which ended in dismembering the empire of Charlemagne. Such kings as Alfred and Athelstan were not likely to permit it. And the English counties, each under its own alderman, were not of a size to encourage the usurpations of their governors. But when the whole kingdom was subdued, there arose, unfortunately, a fashion of intrusting great prov-

[9] Vol. i, p. 200. Blackstone has laboured to prove the same proposition, but his knowledge of English history was rather superficial.

[10] "Chronicon Saxon.," p. 99. Hume says that Ethelwold, who attempted to raise an insurrection against Edward the Elder, was son of Ethelbert. The Saxon chronicle only calls him the king's cousin, which he would be as the son of Ethelred.

[11] Spelman, "Vita Alfredi," appendix.

[12] According to the historian of Ramsey, a sort of interregnum took place on Edgar's death, his son's birth not being thought sufficient to give him a clear right during infancy. (3 Gale, XV. Script., p. 413.)

inces to the administration of a single earl. Notwithstanding their union, Mercia, Northumberland, and East Anglia were regarded in some degree as distinct parts of the monarchy. A difference of laws, though probably but slight, kept up this separation. Alfred governed Mercia by the hands of a nobleman who had married his daughter Ethelfleda; and that lady after her husband's death held the reins with a masculine energy till her own, when her brother Edward took the province into his immediate command.[13] But from the era of Edward II's succession the provincial governors began to overpower the royal authority, as they had done upon the Continent. England under this prince was not far removed from the condition of France under Charles the Bald. In the time of Edward the Confessor the whole kingdom seems to have been divided among five earls,[14] three of whom were Godwin and his sons Harold and Tostig. It can not be wondered at that the royal line was soon supplanted by the most powerful and popular of these leaders, a prince well worthy to have founded a new dynasty if his eminent qualities had not yielded to those of a still more illustrious enemy.

There were but two denominations of persons above the class of servitude, Thanes and Ceorls; the owners and the cultivators of land, or rather, perhaps, as a more accurate distinction, the gentry and the inferior people. Among all the northern nations, as is well known, the weregild, or compensation for murder, was the standard measure of the gradations of society. In the Anglo-Saxon laws we find two ranks of freeholders: the first, called King's Thanes, whose lives were valued at twelve hundred shillings; the second of inferior degree, whose composition was half that sum.[15] That of a ceorl was two hundred shillings. The nature of this distinction between royal and lesser thanes is very obscure, and I shall have something more to say of it presently. However, the thanes in general, or Anglo-Saxon gentry, must have been very numerous. A law of Ethelred directs the sheriff to take twelve of the chief thanes in every hundred, as his assessors on the bench of justice.[16] And from "Doomsday Book" we may collect that they had formed a pretty large class, at least in some counties, under Edward the Confessor.[17]

[13] "Chronicon Saxon."

[14] The word earl (eorl) meant originally a man of noble birth, as opposed to the ceorl. It was not a title of office till the eleventh century, when it was used as synonymous to alderman, for a governor of a county or province. After the conquest it superseded altogether the more ancient title. (Selden's "Titles of Honour," vol. iii. p. 638 (edit. Wilkins), and Anglo-Saxon writings passim.)

[15] Wilkins, pp. 40, 43, 64, 72, 101.

[16] Id., p. 117.

[17] "Doomsday Book" having been compiled by different sets of commissioners, their language has sometimes varied in describing the same class of persons. The liberi homines, of whom we find continual mention in some counties, were perhaps not different from the thaini, who occur in other places. But this subject is very obscure; and a clear apprehension of the classes of society mentioned in Doomsday seems at present unattainable.

The composition for the life of a ceorl was, as has been said, two hundred shillings. If this proportion to the value of a thane points out the subordination of ranks, it certainly does not exhibit the lower freemen in a state of complete abasement. The ceorl was not bound, at least universally, to the land which he cultivated;[18] he was occasionally called upon to bear arms for the public safety;[19] he was protected against personal injuries, or trespasses on his land;[20] he was capable of property, and of the privileges which it conferred. If he came to possess five hides of land (or about six hundred acres), with a church and mansion of his own, he was entitled to the name and rights of a thane.[21] And if by owning five hides of land he became a thane, it is plain that he might possess a less quantity without reaching that rank. There were, therefore, ceorls with lands of their own, and ceorls without lands of their own; ceorls who might commend themselves to what lord they pleased, and ceorls who could not quit the land on which they lived, owing various services to the lord of the manor, but always freemen, and capable of becoming gentlemen.[22]

Some might be inclined to suspect that the ceorls were sliding more and more toward a state of servitude before the conquest.[23] The natural tendency of such times of rapine, with the analogy of a similar change in France, leads to this conjecture. But there seems to be no proof of it; and the passages which recognise the capacity of a ceorl to become a thane are found in the later period of Anglo-Saxon law. Nor can it be shown, as I apprehend, by any authority earlier than that of Glanvil, whose treatise was written about 1180, that the peasantry of England were reduced to that extreme debasement which our law-books call villenage; a condition which left them no civil rights with respect to their lord. For, by the laws of William the Conqueror, there was still a composition fixed for the murder of a villein or ceorl, the strongest proof of his being, as it was called, law-worthy, and possessing a rank, however subordinate, in political society. And this composition was due to his kindred, not to the lord.[24] Indeed, it seems positively declared

[18] "Leges Alfredi," c. 33, in Wilkins. This text is not unequivocal; and I confess that a law of Ina (c. 39) has rather a contrary appearance. But the condition of all ceorls need not be supposed to have been the same; and in the latter period this can be shown to have been subject to much diversity.

[19] "Leges Inæ," c. 51, ibid.

[20] "Leges Alfredi," chaps. 31, 35.

[21] "Leges Athelstani," ibid., pp. 70, 71.

[22] It is said in the introduction to the "Supplementary Records of Doomsday," which I quote from Cooper's "Account of Public Records" (i, 223), that the word commendatio is confined to the three counties in the second volume of "Doomsday," except that it occura twice in the Inquisitio Eliensis for Cambridgeshire. But, if this particular word does not occur, we have the sense, in "ire cum terra ubi voluerit," or "quærere dominum ubi voluerit," which meet our eyes perpetually in the first volume of "Doomsday." The difference of phrases in this record must, in great measure, be attributed to that of the persons employed.

[23] If the laws that bear the name of William are, as is generally supposed, those of his predecessor, Edward, they were already annexed to the soil (p. 225).

[24] Wilkins, p. 221.

in another passage that the cultivators, though bound to remain upon the land, were only subject to certain services.[25] Again, the treatise denominated the "Laws of Henry I," which, though not deserving that appellation, must be considered as a contemporary document, expressly mentions the twyhinder or villein as a freeman.[26] Nobody can doubt that the villani and bordarii of "Doomsday Book," who are always distinguished from the serfs of the demesne, were the ceorls of Anglo-Saxon law. And I presume that the socmen, who so frequently occur in that record, though far more in some counties than in others, were ceorls more fortunate than the rest, who by purchase had acquired freeholds, or by prescription and the indulgence of their lords had obtained such a property in the outlands allotted to them that they could not be removed, and in many instances might dispose of them at pleasure. They are the root of a noble plant, the free socage tenants, or English yeomanry, whose independence has stamped with peculiar features both our constitution and our national character.[27]

Beneath the ceorls in political estimation were the conquered natives of Britain. In a war so long and so obstinately maintained as that of the Britons against their invaders, it is natural to conclude that in a great part of the country the original inhabitants were almost extirpated, and that the remainder were reduced into servitude. This, till lately, has been the concurrent opinion of our antiquaries; and, with some qualification, I do not see why it should not still be received.[28] In every kingdom of the continent which was formed by the northern nations out of the Roman Empire, the Latin language preserved its superiority, and has much more been corrupted through ignorance and want of a standard than intermingled with their original idiom. But our own language is, and has been from the earliest times after the Saxon conquest, essentially Teutonic, and of the most obvious affinity to those dialects which are spoken in Denmark and Lower Saxony. With such as are extravagant enough to controvert so evident a truth it is idle to contend; and those who believe a great part of our language to be borrowed from the Welsh may doubtless infer that a great part of our population is derived from the same source.[29] If we look through the subsisting Anglo-Saxon records, there is not very frequent mention of British subjects. But some undoubtedly there were in a state of freedom, and possessed of landed estate. A Welshman (that is, a Briton) who held five hides was raised, like a ceorl, to the

[25] Wilkins, p. 225.
[26] "Leges Henr. I," chaps. 70 and 76, in Wilkins.
[27] [Note III.]
[28] [Note IV.]
[29] It is but just to mention a partial exception, according to a considerable authority, to what has been said in the text as to the absence of British roots in the English language, though it can but

dignity of thane.[30] In the composition, however, for their lives, and consequently in their rank in society, they were inferior to the meanest Saxon freemen. The slaves, who were frequently the objects of legislation, rather for the purpose of ascertaining their punishment than of securing their rights, may be presumed, at least in early times, to have been part of the conquered Britons. For though his own crimes, or the tyranny of others, might possibly reduce a Saxon ceorl to this condition,[31] it is inconceivable that the lowest of those who won England with their swords should in the establishment of the new kingdoms have been left destitute of personal liberty.

The great council by which an Anglo-Saxon king was guided in all the main acts of government bore the appellation of Witenagemot, or the assembly of the wise men. All their laws express the assent of this council; and there are instances where grants made without its concurrence have been revoked. It was composed of prelates and abbots, of the aldermen of shires, and, as it is generally expressed, of the noble and wise men of the kingdom.[32] Whether the lesser thanes, or inferior proprietors of lands, were entitled to a place in the national council, as they certainly were in the shiregemot, or county court, is not easily to be decided. Many writers have concluded, from a passage in the "History of Ely," that no one, however nobly born, could sit in the Witenagemot, so late at least as the reign of Edward the Confessor, unless he possessed forty hides of land, or about five thousand acres.[33] But the passage in question does not unequivocally relate to the Witenagemot; and being vaguely worded by an ignorant monk, who perhaps had never gone

slightly affect the general proposition. Mr. Kemble remarks the number of minute distinctions, in describing the local features of a country, which abound in the Anglo-Saxon charters, and the difficulties which occur in their explanation. One of these relates to the language itself: "It can not be doubtful that local names, and those devoted to distinguish the natural features of a country, possess an inherent vitality, which even the urgency of conquest is frequently unable to destroy. A race is rarely so entirely removed as not to form an integral, although subordinate, part of the new state based upon its ruins; and in the case where the cultivator continues to be occupied with the soil, a change of master will not necessarily lead to the abandonment of the names by which the land itself, and the instruments or processes of labour, are designated. On the contrary, the conquering race are apt to adopt these names from the conquered; and thus, after the lapse of twelve centuries and innumerable civil convulsions, the principal words of the class described yet prevail in the language of our people, and partially in our literature. Many, then, of the words which we seek in vain in the Anglo-Saxon dictionaries are, in fact, to be sought in those of the Cymri, from whose practice they were adopted by the victorious Saxons, in all parts of the country; and they are not Anglo-Saxon, but Welsh (i. e., foreign, Wylisc), very frequently unmodified either in meaning or pronunciation." (Preface to "Codex Diplom.," vol. iii, p. 15.) Though this bears intrinsic marks of probability, it is yet remarkable that, in a long list of descriptive words which immediately follows, there are not six for which Mr. Kemble suggests a Cambrian root: and of these some, such as comb, a valley, belong to parts of England where the British long kept their ground.

[30] "Leges Inæ," page 18; "Leg. Athelst.," p. 71.

[31] "Leges Inæ," c. 24.

[32] "Leges Anglo-Saxon." In Wilkins, passim.

[33] Quoniam ille quadraginta hydarum terræ dominium minimè obtineret, licet nobilis esset, inter proceres tunc numerari non potuit. (3 Gale, p. 513.)

beyond his fens, ought not to be assumed as an incontrovertible testimony. Certainly so very high a qualification can not be supposed to have been requisite in the kingdoms of the Heptarchy, nor do we find any collateral evidence to confirm the hypothesis. If, however, all the body of thanes or freeholders were admissible to the Witenagemot, it is unlikely that the privilege should have been fully exercised. Very few, I believe, at present imagine that there was any representative system in that age, much less that the ceorls or inferior freemen had the smallest share in the deliberations of the national assembly. Every argument which a spirit of controversy once pressed into this service has long since been victoriously refuted.[34]

It has been justly remarked by Hume that, among a people who lived in so simple a manner as these Anglo-Saxons, the judicial power is always of more consequence than the legislative. The liberties of these Anglo-Saxon thanes were chiefly secured, next to their swords and their free spirits, by the inestimable right of deciding civil and criminal suits in their own county court; an institution which, having survived the conquest, and contributed in no small degree to fix the liberties of England upon a broad and popular basis, by limiting the feudal aristocracy, deserves attention in following the history of the British constitution.

The division of the kingdom into counties, and of these into hundreds and decennaries, for the purpose of administering justice, was not peculiar to England. In the early laws of France and Lombardy frequent mention is made of the hundred court, and now and then of those petty village magistrates who in England were called tithing-men. It has been usual to ascribe the establishment of this system among our Saxon ancestors to Alfred, upon the authority of Ingulfus, a writer contemporary with the conquest. But neither the biographer of Alfred, Asserius, nor the existing laws of that prince, bear testimony to the fact. With respect, indeed, to the division of counties, and their government by aldermen and sheriffs, it is certain that both existed long before his time;[35] and the utmost that can be sup-

[34] [Note V.]

[35] Counties, as well as the alderman who presided over them, are mentioned in the laws of Ina, c. 36.

For the division of counties, which were not always formed in the same age, nor on the same plan, see Palgrave, i, 116. We do not know much about the inland counties in general; those on the coasts are in general larger, and are mentioned in history. All we can say is, that they all existed at the conquest as at present. The hundred is supposed by Sir H. Ellis, on the authority of an ancient record, to have consisted of a hundred hides of land, cultivated and waste taken together. (Introduction to "Doomsday," i, 185.) But this implies equality of size, which is evidently not the case. A passage in the "Dialogus de Scaccario" (p. 31) is conclusive: Hyda a primitiva institutione in centum acris constat: hundredus est ex hydarum aliquot centenariis, sed non determinatis; quidam enim ex pluribus, quidam ex paucioribus hydis constat.

posed is, that he might in some instances have ascertained an unsettled boundary. There does not seem to be equal evidence as to the antiquity of the minor divisions. Hundreds, I think, are first mentioned in a law of Edgar, and tithings in one of Canute.[36] But as Alfred, it must be remembered, was never master of more than half the kingdom, the complete distribution of England into these districts can not, upon any supposition, be referred to him.

There is, indeed, a circumstance observable in this division which seems to indicate that it could not have taken place at one time nor upon one system; I mean the extreme inequality of hundreds in different parts of England. Whether the name be conceived to refer to the number of free families, or of landholders, or of petty vills, forming so many associations of mutual assurance or frank-pledge, one can hardly doubt that, when the term was first applied, a hundred of one or other of these were comprised, at an average reckoning, within the district. But it is impossible to reconcile the varying size of hundreds to any single hypothesis. The county of Sussex contains sixty-five, that of Dorset forty-three; while Yorkshire has only twenty-six, and Lancashire but six. No difference of population, though the south of England was undoubtedly far the best peopled, can be conceived to account for so prodigious a disparity. I know of no better solution than that the divisions of the north, properly called wapentakes,[37] were planned upon a different system, and obtained the denomination of hundreds incorrectly after the union of all England under a single sovereign.

Assuming, therefore, the name and partition of hundreds to have originated in the southern counties, it will rather, I think, appear probable that they contained only a hundred free families, including the ceorls as well as their landlords. If we suppose none but the latter to have been numbered, we should find six thousand thanes in Kent, and sixty-five hundred in Sussex—a reckoning totally inconsistent with any probable estimate.[38] But though we have little direct testimony as to the population of those times, there is one passage which falls in very sufficiently with the former supposition. Bede says that the kingdom of the South Saxons, comprehending Surrey as well as Sussex, contained seven thousand families. The county of Sussex alone is divided into sixty-five hundreds, which comes at least close enough to prove that free families, rather than proprietors, were the subject of that numeration. And this is the interpretation of

[36] Wilkins, pp. 87, 136. The former, however, refers to them as an ancient institution: quæratur centuriæ conventus, sicut antea institutum erat.

[37] "Leges Edwardi Confess.," c. 33.

[38] It would be easy to mention particular hundreds in these counties so small as to render this supposition quite ridiculous.

Du Cange and Muratori as to the Centenæ and Decaniæ of their own ancient laws.

I can not but feel some doubt, notwithstanding a passage in the laws ascribed to Edward the Confessor,[39] whether the tithing-man ever possessed any judicial magistracy over his small district. He was, more probably, little different from a petty constable, as is now the case, I believe, wherever that denomination of office is preserved. The court of the hundred was held, as on the Continent, by its own centenarius, or hundred-man, more often called alderman, and, in the Norman times, bailiff or constable, but under the sheriff's writ. It is, in the language of the law, the sheriff's tourn and leet. And in the Anglo-Saxon age it was a court of justice for suitors within the hundred, though it could not execute its process beyond that limit. It also punished small offences, and was intrusted with the "view of frankpledge," and the maintenance of the great police of mutual surety. In some cases—that is, when the hundred was competent to render judgment—it seems that the county court could only exercise an appellant jurisdiction for denial of right in the lower tribunal. But in course of time the former and more celebrated court, being composed of far more conspicuous judges, and held before the bishop and the earl, became the real arbiter of important suits; and the court leet fell almost entirely into disuse as a civil jurisdiction, contenting itself with punishing petty offences and keeping up a local police.[40] It was, however, to the county court that an English freeman chiefly looked for the maintenance of his civil rights. In this assembly, held twice in the year by the bishop and the alderman,[41] or, in his absence, the sheriff, the oath of allegiance was administered to all freemen, breaches of the peace were inquired into, crimes were investigated, and claims were determined. I assign all these functions to the county court upon the supposition that no other subsisted during the Saxon times, and that the separation of the sheriff's tourn for criminal jurisdiction had not yet taken place, which, however, I can not pretend to determine.[42]

A very ancient Saxon instrument, recording a suit in the county court under the reign of Canute, has been published by Hickes, and may be deemed worthy of a literal translation in this place: "It is made known by this writing that in the shire-

[39] "Leges Edwardi Confess.," p. 203. Nothing, as far as I know, confirms this passage, which hardly tallies with what the genuine Anglo-Saxon documents contain as to the judicial arrangements of that period.

[40] [Note VI.]

[41] The alderman was the highest rank after the royal family, to which he sometimes belonged. Every county had its alderman, but the name is not applied in written documents to magistrates of boroughs before the conquest. (Palgrave, ii, 350.) He thinks, however, that London had aldermen from time immemorial. After the conquest the title seems to have become appropriated to municipal magistrates.

[42] This point is obscure; but I do not perceive that the Anglo-Saxon laws distinguish the civil from the criminal tribunal.

gemot (county court) held at Agelnothes-stane (Aylston in Herefordshire) in the reign of Canute there sat Athelstan the bishop, and Ranig the alderman, and Edwin his son, and Leofwin Wulfig's son; and Thurkil the White and Tofig came there on the king's business; and there were Bryning the sheriff, and Athelweard of Frome, and Leofwin of Frome, and Goodric of Stoke, and all the thanes of Herefordshire. Then came to the mote Edwin, son of Enneawne, and sued his mother for some lands, called Weolintun and Cyrdeslea. Then the bishop asked who would answer for his mother. Then answered Thurkil the White, and said that he would, if he knew the facts, which he did not. Then were seen in the mote three thanes, that belonged to Feligly (Fawley, five miles from Aylston), Leofwin of Frome, Ægelwig the Red, and Thinsig Stægthman; and they went to her, and inquired what she had to say about the lands which her son claimed. She said that she had no land which belonged to him, and fell into a noble passion against her son, and, calling for Leofleda, her kinswoman, the wife of Thurkil, thus spake to her before them: 'This is Leofleda, my kinswoman, to whom I give my lands, money, clothes, and whatever I posses after my life': and this said, she thus spake to the thanes: 'Behave like thanes, and declare my message to all the good men in the mote, and tell them to whom I have given my lands and all my possessions, and nothing to my son'; and bade them be witnesses to this. And thus they did, rode to the mote, and told all the good men what she had enjoined them. Then Thurkil the White addressed the mote, and requested all the thanes to let his wife have the lands which her kinswoman had given her; and thus they did, and Thurkil rode to the Church of St. Ethelbert, with the leave and witness of all the people, and had this inserted in a book in the church." [43]

It may be presumed from the appeal made to the thanes present at the county court, and is confirmed by other ancient authorities,[44] that all of them, and they alone, to the exclusion of inferior freemen, were the judges of civil controversies. The latter, indeed, were called upon to attend its meetings, or, in the language of our present law, were suitors to the court, and it was penal to be absent. But this was on account of other duties, the oath of allegiance which they were to take, or the frank-

[43] Hickes, "Dissertatio Epistolaris," p. 4, in "Thesaurus Antiquitatum Septentrion," vol. iii. "Before the conquest," says Gurdon (on "Courts-Barons," p. 589), "grants were enrolled in the shire-book in public shire-mote, after proclamation made for any to come in that could claim the lands conveyed; and this was as irreversible as the modern fine with proclamations, or recovery." This may be so; but the county court has at least long ceased to be a court of record, and one would ask for proof of the assertion. The book kept in the Church of St. Ethelbert, wherein Thurkil is said to have inserted the proceedings of the county court, may or may not have been a public record.

[44] Id., p. 3; "Leges Henr. Primi," c. 29.

pledges into which they were to enter, not in order to exercise any judicial power, unless we conceive that the disputes of the ceorls were decided by judges of their own rank. It is more important to remark the crude state of legal process and inquiry which this instrument denotes. Without any regular method of instituting or conducting causes, the county court seems to have had nothing to recommend it but, what indeed is no trifling matter, its security from corruption and tyranny; and in the practical jurisprudence of our Saxon ancestors, even at the beginning of the eleventh century, we perceive no advance of civility and skill from the state of their own savage progenitors on the banks of the Elbe. No appeal could be made to the royal tribunal, unless justice was denied in the county court.[45] This was the great constitutional judicature in all questions of civil right. In another instrument, published by Hickes, of the age of Ethelred II, the tenant of lands which were claimed in the king's court refused to submit to the decree of that tribunal without a regular trial in the county, which was accordingly granted.[46] There were, however, royal judges, who, either by way of appeal from the lower courts, or in excepted cases, formed a paramount judicature; but how their court was composed under the Anglo-Saxon sovereigns I do not pretend to assert.[47]

It has been a prevailing opinion that trial by jury may be referred to the Anglo-Saxon age, and common tradition has ascribed it to the wisdom of Alfred. In such a historical deduction of the English government as I have attempted, an institution so peculiarly characteristic deserves every attention to its origin; and I shall, therefore, produce the evidence which has been supposed to bear upon this most eminent part of our judicial system. The first text of the Saxon laws which may appear to have such a meaning is in those of Alfred: "If any one accuse a king's thane of homicide, if he dare to purge himself (ladian), let him do it along with twelve king's thanes." "If any one accuse a thane of less rank (læssa maga) than a king's thane, let him purge himself along with eleven of his equals, and one king's thane."[48] This law, which Nicholson contends to mean nothing but trial by jury, has been referred by Hickes to that ancient usage of compurgation, where the accused sustained his

[45] "Leges Eadgari," p. 77; Canuti, p. 136; Henrici Primi, c. 34. I quote the latter freely as Anglo-Saxon, though posterior to the conquest, their spirit being perfectly of the former period.

[46] "Dissertatio Epistolaris," p. 5.

[47] Madox, "History of the Exchequer," p. 65, will not admit the existence of any court analogous to the Curia Regis before the conquest, all pleas being determined in the county. There are, however, several instances of decisions before the king; and in some cases it seems that the witenagemot had a judicial authority. ("Leges Canuti," pp. 135, 136; "Hist. Eliensis," p. 469; "Chron. Sax.," p. 169.) In the "Leges Henr. I," c. 10, the limits of the royal and local jurisdictions are defined, as to criminal matters, and seem to have been little changed since the reign of Canute, p. 135. [1818.] [Note VII.]

[48] "Leges Alfredi," p. 47.

own oath by those of a number of his friends, who pledged their knowledge, or at least their belief, of his innocence.[49]

In the canons of the Northumbrian clergy we read as follows: "If a king's thane deny this (the practice of heathen superstitions), let twelve be appointed for him, and let him take twelve of his kindred (or equals, maga) and twelve British strangers; and if he fail, then let him pay for his breach of law twelve half-marcs: If a landholder (or lesser thane) deny the charge, let as many of his equals and as many strangers be taken as for a royal thane; and if he fail, let him pay six half-marcs: If a ceorl deny it, let as many of his equals and as many strangers be taken for him as for the others; and if he fail, let him pay twelve oræ for his breach of law." [50] It is difficult at first sight to imagine that these thirty-six so selected were merely compurgators, since it seems absurd that the judge should name indifferent persons, who without inquiry were to make oath of a party's innocence. Some have therefore conceived that, in this and other instances where compurgators are mentioned, they were virtually jurors, who, before attesting the facts, were to inform their consciences by investigating them. There are, however, passages in the Saxon laws nearly parallel to that just quoted, which seem incompatible with this interpretation. Thus, by a law of Athelstan, if any one claimed a stray ox as his own, five of his neighbours were to be assigned, of whom one was to maintain the claimant's oath.[51] Perhaps the principle of these regulations, and, indeed, of the whole law of compurgation, is to be found in that stress laid upon general character which pervades the Anglo-Saxon jurisprudence. A man of ill reputation was compelled to undergo a triple ordeal, in cases where a single one sufficed for persons of credit; a provision rather inconsistent with the trust in a miraculous interposition of Providence which was the basis of that superstition. And the law of frank-pledge proceeded upon the maxim that the best guarantee of every man's obedience to the government was to be sought in the confidence of his neighbours. Hence, while some compurgators were to be chosen by the sheriff, to avoid partiality and collusion, it was still intended that they should be residents of the vicinage, witnesses of the defendant's previous life, and competent to estimate the probability of his exculpatory oath. For the British strangers, in the canon quoted above, were certainly the original natives, more intermingled with their conquerors, probably, in the provinces north of the Humber than elsewhere, and still denominated strangers, as the distinction of races was not done away.

[49] Nicholson, prefatio ad "Leges Anglo-Saxon."; Wilkinsii, p. 10; Hickes, "Dissertatio Epistolaris."

[50] Wilkins, p. 100.

[51] "Leges Athelstani," p. 58.

If in this instance we do not feel ourselves warranted to infer the existence of trial by jury, still less shall we find even an analogy to it in an article of the treaty between England and Wales during the reign of Ethelred II: "Twelve persons skilled in the law, six English and six Welsh, shall instruct the natives of each country, on pain of forfeiting their possessions, if, except through ignorance, they give false information." [52] This is obviously but a regulation intended to settle disputes among the Welsh and English, to which their ignorance of each other's customs might give rise.

By a law of the same prince, a court was to be held in every wapentake, where the sheriff and twelve principal thanes should swear that they would neither acquit any criminal nor convict any innocent person.[53] It seems more probable that these thanes were permanent assessors to the sheriff, like the scabini so frequently mentioned in the early laws of France and Italy, than jurors indiscriminately selected. This passage, however, is stronger than those which have been already adduced; and it may be thought, perhaps, with justice, that at least the seeds of our present form of trial are discoverable in it. In the "History of Ely" we twice read of pleas held before twenty-four judges in the court of Cambridge, which seems to have been formed out of several neighbouring hundreds.[54]

But the nearest approach to a regular jury which has been preserved in our scanty memorials of the Anglo-Saxon age occurs in the history of the monastery of Ramsey. A controversy relating to lands between that society and a certain nobleman was brought into the county court, when each party was heard in his own behalf. After this commencement, on account probably of the length and difficulty of the investigation, it was referred by the court to thirty-six thanes, equally chosen by both sides.[55] And here we begin to perceive the manner in which those tumultuous assemblies, the mixed body of freeholders in their county court, slid gradually into a more steady and more diligent tribunal. But this was not the work of a single age. In the Conqueror's reign we find a proceeding very similar to the case of Ramsey, in which the suit has been commenced in the county court, before it was found expedient to remit it to a select body of freeholders. In the reign of William Rufus, and down to that of Henry II, when the trial of writs of right by the grand assize was introduced, Hickes has discovered other instances of the original usage.[56] The language of "Doomsday Book" lends some confirmation to its existence at the time of that survey;

[52] "Leges Ethelredi," p. 125.
[53] "Leges Ethelredi," p. 117.
[54] "Hist. Eliensis," in Gale's "Scriptores," iii, pp. 471 and 478.
[55] "Hist. Ramsey," id., p. 415.
[56] "Hickesii Dissertatio Epistolaris," pp. 33, 36.

and even our common legal expression of trial by the country seems to be derived from a period when the form was literally popular.

In comparing the various passages which I have quoted it is impossible not to be struck with the preference given to twelve, or some multiple of it, in fixing the number either of judges or compurgators. This was not peculiar to England. Spelman has produced several instances of it in the early German laws. And that number seems to have been regarded with equal veneration in Scandinavia.[57] It is very immaterial from what caprice or superstition this predilection arose. But its general prevalence shows that, in searching for the origin of trial by jury, we can not rely for a moment upon any analogy which the mere number affords. I am induced to make this observation, because some of the passages which have been alleged by eminent men for the purpose of establishing the existence of that institution before the conquest seem to have little else to support them.[58]

There is certainly no part of the Anglo-Saxon polity which has attracted so much the notice of modern times as the law of frank-pledge, or mutual responsibility of the members of a tithing for each other's abiding the course of justice. This, like the distribution of hundreds and tithings themselves, and like trial by jury, has been generally attributed to Alfred; and of this, I suspect, we must also deprive him. It is not surprising that the great services of Alfred to his people in peace and in war should have led posterity to ascribe every institution, of which the beginning was obscure, to his contrivance, till his fame has become almost as fabulous in legislation as that of Arthur in arms. The English nation redeemed from servitude, and their name from extinction; the lamp of learning refreshed, when scarce a glimmer was visible; the watchful observance of justice and public order—these are the genuine praises of Alfred, and entitle him to the rank he has always held in men's esteem, as the best and greatest of English kings. But of his legislation there is little that can be asserted with sufficient evidence; the laws of his time that remain are neither numerous nor particularly interesting; and a loose report of late writers is not sufficient to prove that he compiled a domboc, or general code, for the government of his kingdom.

An ingenious and philosophical writer has endeavoured to found the law of frank-pledge upon one of those general principles to which he always loves to recur. "If we look upon a tithing," he says, "as regularly composed of ten families, this

[57] Spelman's Glossary, voc. Jurata; Du Cange, voc. Nembda; "Edinb. Review," vol. xxxi, p. 115—a most learned and elaborate essay.
[58] [Note VIII.]

branch of its police will appear in the highest degree artificial and singular; but if we consider that society as of the same extent with a town or village, we shall find that such a regulation is conformable to the general usage of barbarous nations, and is founded upon their common notions of justice." [59] A variety of instances are then brought forward, drawn from the customs of almost every part of the world, wherein the inhabitants of a district have been made answerable for crimes and injuries imputed to one of them. But none of these fully resemble the Saxon institution of which we are treating. They relate either to the right of reprisals, exercised with respect to the subjects of foreign countries, or to the indemnification exacted from the district, as in our modern statutes which give an action in certain cases of felony against the hundred, for crimes which its internal police was supposed capable of preventing. In the Irish custom, indeed, which bound the head of a sept to bring forward every one of his kindred who should be charged with any heinous crime, we certainly perceive a strong analogy to the Saxon law, not as it latterly subsisted, but under one of its prior modifications. For I think that something of a gradual progression may be traced to the history of this famous police, by following the indications afforded by those laws through which alone we become acquainted with its existence.

The Saxons brought with them from their original forests at least as much roughness as any of the nations which overturned the Roman Empire, and their long struggle with the Britons could not contribute to polish their manners. The royal authority was weak; and little had been learned of that regular system of government which the Franks and Lombards had acquired from the provincial Romans, among whom they were mingled. No people were so much addicted to robbery, to riotous frays, and to feuds arising out of family revenge, as the Anglo-Saxons. Their statutes are filled with complaints that the public peace was openly violated, and with penalties which seem by their repetition to have been disregarded. The vengeance taken by the kindred of a murdered man was a sacred right, which no law ventured to forbid, though it was limited by those which established a composition, and by those which protected the family of the murderer from their resentment. Even the author of the laws ascribed to the Confessor speaks of this family warfare, where the composition had not been paid, as perfectly lawful.[60] But the law of composition tended probably to increase

[59] Millar on the "English Government," vol. i, p. 189.

[60] Parentibus occisi fiat emendatio, vel guerra eorum portetur. (Wilkins, p. 199.) This, like many other parts of that spurious treatise, appears to have been taken from some older laws, or at least traditions. I do not conceive that this private revenge was tolerated by law after the conquest.

the number of crimes. Though the sums imposed were sometimes heavy, men paid them with the help of their relations, or entered into voluntary associations, the purposes whereof might often be laudable, but which were certainly susceptible of this kind of abuse. And many led a life of rapine, forming large parties of ruffians, who committed murder and robbery with little dread of punishment.

Against this disorderly condition of society the wisdom of our English kings, with the assistance of their great councils, was employed in devising remedies, which ultimately grew up into a peculiar system. No man could leave the shire to which he belonged without the permission of its alderman.[61] No man could be without a lord, on whom he depended; though he might quit his present patron, it was under the condition of engaging himself to another. If he failed in this, his kindred were bound to present him in the county court, and to name a lord for him themselves. Unless this were done, he might be seized by any one who met him as a robber.[62] Hence, notwithstanding the personal liberty of the peasants, it was not very practicable for one of them to quit his place of residence. A stranger guest could not be received more than two nights as such; on the third the host became responsible for his inmate's conduct.[63]

The peculiar system of frank-pledges seems to have passed through the following very gradual stages: At first an accused person was obliged to find bail for standing his trial.[64] At a subsequent period his relations were called upon to become sureties for payment of the composition and other fines to which he was liable.[65] They were even subject to be imprisoned until payment was made, and this imprisonment was commutable for a certain sum of money. The next stage was to make persons already convicted, or of suspicious repute, give sureties for their future behaviour.[66] It is not till the reign of Edgar that we find the first general law, which places every man in the condition of the guilty or suspected, and compels him to find a surety, who shall be responsible for his appearance when judicially summoned.[67] This is perpetually repeated and enforced in later statutes, during his reign and that of Ethelred. Finally, the laws of Canute declare the necessity of belonging to some hundred and tithing, as well as of providing sureties;[68] and it may, perhaps, be inferred that the custom of rendering every member of a tithing answerable for the appearance of all the rest, as it existed after the conquest, is as old as the reign of this Danish monarch.

[61] "Leges Alfredi," c. 33.
[62] "Leges Athelstani," p. 56.
[63] "Leges Edwardi Confess.," p. 202.
[64] "Leges Lotharii" [regis Cantii], p. 8.
[65] "Leges Edwardi Senioris," p. 53.
[66] "Leges Athelstani," p. 57, c. 6, 7, 8.
[67] "Leges Eadgari," p. 78.
[68] "Leges Canuti," p. 137.

But a different theory, at least as to the nature of folkland, has lately been maintained by writers of very great authority.[76]

It is an improbable and even extravagant supposition that all these hereditary estates of the Anglo-Saxon freeholders were originally parcels of the royal demesne, and consequently that the king was once the sole proprietor in his kingdom. Whatever partitions were made upon the conquest of a British province, we may be sure that the shares of the army were coeval with those of the general. The great mass of Saxon property could not have been held by actual beneficiary grants from the crown. However, the royal demesnes were undoubtedly very extensive. They continued to be so, even in the time of the Confessor, after the donations of his predecessors. And several instruments granting lands to individuals, besides those in favour of the Church, are extant. These are generally couched in that style of full and unconditional conveyance which is observable in all such charters of the same age upon the Continent. Some exceptions, however, occur; the lands bequeathed by Alfred to certain of his nobles were to return to his family in default of male heirs; and Hickes is of opinion that the royal consent, which seems to have been required for the testamentary disposition of some estates, was necessary on account of their beneficiary tenure.[77]

All the freehold lands of England, except some of those belonging to the Church, were subject to three great public burdens—military service in the king's expeditions, or at least in defensive war,[78] the repair of bridges, and that of royal fortresses. These obligations, and especially the first, have been sometimes thought to denote a feudal tenure. There is, however, a confusion into which we may fall by not sufficiently discriminating the rights of a king as chief lord of his vassals, and as sovereign of his subjects. In every country the supreme power is entitled to use the arm of each citizen in the public defence. The usage of all nations agrees with common reason in establishing this great principle. There is nothing, therefore, peculiarly feudal in this military service of landholders; it was due from the allodial proprietors upon the Continent; it was derived from their German ancestors; it had been fixed probably by the legislatures of the Heptarchy upon the first settlement in Britain.

It is material, however, to observe that a thane forfeited his hereditary freehold by misconduct in battle: a penalty more severe than was inflicted upon allodial proprietors on the Conti-

[76] [Note IX.]

[77] "Dissertatio Epistolaris," p. 60.

[78] This duty is by some expressed rata expeditio; but others, hostis propulsio, which seems to make no small difference. But, unfortunately, most of the military service which an Anglo-Saxon freeholder had to render was of the latter kind.

nent. We even find in the earliest Saxon laws that the sithcundman, who seems to have corresponded to the inferior thane of later times, forfeited his land by neglect of attendance in war, for which an allodialist in France would only have paid his heribannum, or penalty.[79] Nevertheless, as the policy of different states may enforce the duties of subjects by more or less severe sanctions, I do not know that a law of forfeiture in such cases is to be considered as positively implying a feudal tenure.

But a much stronger presumption is afforded by passages that indicate a mutual relation of lord and vassal among the free proprietors. The most powerful subjects have not a natural right to the service of other freemen. But in the laws enacted during the Heptarchy we find that the sithcundman, or petty gentleman, might be dependent on a superior lord.[80] This is more distinctly expressed in some ecclesiastical canons, apparently of the tenth century, which distinguish the king's thane from the landholder, who depended upon a lord.[81] Other proofs of this might be brought from the Anglo-Saxon laws.[82] It is not, however, sufficient to prove a mutual relation between the higher and lower order of gentry, in order to establish the existence of feudal tenures. For this relation was often personal, as I have mentioned more fully in another place, and bore the name of commendation. And no nation was so rigorous as the English in compelling every man, from the king's thane to the ceorl, to place himself under a lawful superior. Hence the question is not to be hastily decided on the credit of a few passages that express this gradation of dependence; feudal vassalage, the object of our inquiry, being of a real, not a personal nature, and resulting entirely from the tenure of particular lands. But it is not unlikely that the personal relation of client, if I may use that word, might in a multitude of cases be changed into that of vassal. And certainly many of the motives which operated in France to produce a very general commutation of allodial into feudal tenure might have a similar influence in England, where the disorderly condition of society made it the interest of every man to obtain the protection of some potent lord.

The word thane corresponds in its derivation to vassal; and the latter term is used by Asserius, the contemporary biographer of Alfred, in speaking of the nobles of that prince.[83] In their

[79] "Leges Inæ," p. 23; Du Cange, voc. Heribannum. By the laws of Canute, p. 135, a fine only was imposed for this offence.

[80] "Leges Inæ," pp. 10, 23.

[81] Wilkins, p. 101.

[82] Pp. 71, 144, 145.

[83] Alfredus cum paucis suis nobilibus et etiam cum quibusdam militibus et Vassallis, p. 166. Nobiles Vassali Sumertunensis pagi, p. 167. Yet Hickes objects to the authenticity of a charter ascribed to Edgar, because it contains the word Vassallus, "quam à Nortmannis Angli habuerunt." ("Dissertatio Epistol.," p. 7.)

The word vassallus occurs not only in the suspicious charter of Cenulf, quoted in a subsequent note, but in one, A. D. 952 ("Codex Diplomat.," ii, 303) to which

attendance, too, upon the royal court, and the fidelity which was expected from them, the king's thanes seem exactly to have resembled that class of followers who, under different appellations, were the guards as well as courtiers of the Frank and Lombard sovereigns. But I have remarked that the word thane is not applied to the whole body of gentry in the more ancient laws, where the word eorl is opposed to the ceorl or roturier, and that of sithcundman [84] to the royal thane. It would be too much to infer, from the extension of this latter word to a large class of persons, that we should interpret it with a close attention to etymology, a very uncertain guide in almost all investigations.

For the age immediately preceding the Norman invasion we can not have recourse to a better authority than "Doomsday Book." That incomparable record contains the names of every tenant, and the conditions of his tenure, under the Confessor, as well as at the time of its compilation, and seems to give little countenance to the notion that a radical change in the system of our laws had been effected during the interval. In almost every page we meet with tenants either of the crown or other lords, denominated thanes, freeholders (liberi homines), or socagers (socmanni). Some of these, it is stated, might sell their lands to whom they pleased; others were restricted from alienation. Some, as it is expressed, might go with their lands whither they would; by which I understand the right of commending themselves to any patron of their choice. These, of course, could not be feudal tenants in any proper notion of that term. Others could not depart from the lord whom they served; not, certainly, that they were personally bound to the soil, but that, so long as they retained it, the seigniory of the superior could not be defeated.[85] But I am not aware that military service is specified in any instance to be due from one of these tenants, though it is difficult to speak as to a negative proposition of this kind with any confidence.

I was led by Mr. Spence ("Equitable Jurisdiction," p. 44), who quotes another from p. 323, which is probably a misprint; but I have found one of Edgar, A. D. 967. ("Cod. Diplomat.," iii, 11.) I think that Mr. Spence, in the ninth and tenth chapters of his learned work, has too much blended the Anglo-Saxon man of a lord with the continental vassal, which is a petitio principii. Certainly the word was of rare use in England; and the authenticity of Asserius, whom I have quoted as a contemporary biographer of Alfred, which is the common opinion, has been called in question by Mr. Wright, who refers that life to the age of the conquest. ("Archæologia," vol. xxix.)

[84] Wilkins, pp. 3, 7, 23, etc.

[85] It sometimes weakens a proposition, which is capable of innumerable proofs, to take a very few at random; yet the following casual specimens will illustrate the common language of "Doomsday Book":

Hæc tria maneria tenuit Ulveva tempore regis Edwardi et potuit ire cum terrâ quò volebat (p. 85).

Toti emit eam T. R. E. (temp. regis Edwardi) de ecclesiâ Malmsburiensi ad ætatem trium hominum; et infra hunc terminum poterat ire cum eâ ad quem vellet dominum (p. 72).

Tres Angli tenuerunt Darneford T. R. E. et non poterant ab ecclesiâ separari. Duo ex iis reddebant v. solidos, et tertius serviebat sicut Thainus (p. 68).

Has terras qui tenuerunt T. R. E. quò voluerunt ire poterunt, præter unum Seric vocatum, qui in Ragendal tenuit iii carucatas terræ; sed non poterat cum eâ alicubi recedere (p. 235).

No direct evidence appears as to the ceremony of homage or the oath of fealty before the conquest. The feudal exaction of aid in certain prescribed cases seems to have been unknown. Still less could those of wardship and marriage prevail, which were no general parts of the great feudal system. The English lawyers, through an imperfect acquaintance with the history of feuds upon the Continent, have treated these unjust innovations as if they had formed essential parts of the system, and sprung naturally from the relation between lord and vassal. And, with reference to the present question, Sir Henry Spelman has certainly laid too much stress upon them in concluding that feudal tenures did not exist among the Anglo-Saxons, because their lands were not in ward nor their persons sold in marriage. But I can not equally concur with this eminent person in denying the existence of reliefs during the same period. If the heriot, which is first mentioned in the time of Edgar [86] (though it may probably have been an established custom long before), were not identical with the relief, it bore at least a very strong analogy to it. A charter of Ethelred's interprets one word by the other.[87] In the laws of William, which re-enact those of Canute concerning heriots, the term relief is employed as synonymous.[88] Though the heriot was in later times paid in chattels, the relief in money, it is equally true that originally the law fixed a sum of money in certain cases for the heriot, and a chattel for the relief. And the most plausible distinction alleged by Spelman, that the heriot is by law due from the personal estate, but the relief from the heir, seems hardly applicable to that remote age, when the law of succession as to real and personal estate was not different.

It has been shown in another place how the right of territorial jurisdiction was generally, and at last inseparably, connected with feudal tenure. Of this right we meet frequent instances in the laws and records of the Anglo-Saxons, though not in those of an early date. A charter of Edred grants to the monastery of Croyland, soc, sac, toll team, and infangthef: words which generally went together in the description of these privileges, and signify the right of holding a court to which all freemen of the territory should repair, of deciding pleas therein, as well as of imposing amercements according to law, of taking tolls upon the sale of goods, and of punishing capitally a thief taken in the fact within the limits of the manor.[89] Another charter from the Confessor grants to the abbey of Ramsey similar

[86] Selden's works, vol. ii, p. 1620.
[87] "Hist. Ramseiens.," p. 430.
[88] "Leges Canuti," p. 144; "Leges Gulielmi," p. 223.
[89] Ingulfus, p. 35. I do not pretend to assert the authenticity of these charters, which at all events are nearly as old as the conquest. Hickes calls most of them in question. ("Dissert. Epist.," p. 66.) But some later antiquaries seem to have been more favourable. ("Archæologia," vol. xviii, p. 49; "Nouveau Traité de Diplomatique," tome i, p. 348.)

rights over all who were suitors to the sheriff's court, subject to military service, and capable of landed possessions—that is, as I conceive, all who were not in servitude.[90] By a law of Ethelred, none but the king could have jurisdiction over a royal thane.[91] And "Doomsday Book" is full of decisive proofs that the English lords had their courts wherein they rendered justice to their suitors, like the continental nobility: privileges which are noticed with great precision in that record as part of the statistical survey. For the right of jurisdiction at a time when punishments were almost wholly pecuniary was a matter of property, and sought from motives of rapacity as well as pride.

Whether, therefore, the law of feudal tenures can be said to have existed in England before the conquest must be left to every reader's determination. Perhaps any attempt to decide it positively would end in a verbal dispute. In tracing the history of every political institution, three things are to be considered—the principle, the form, and the name. The last will probably not be found in any genuine Anglo-Saxon record.[92] Of the form or the peculiar ceremonies and incidents of a regular fief, there is some, though not much, appearance. But those who reflect upon the dependence in which free and even noble tenants held their estates of other subjects, and upon the privileges of territorial jurisdiction, will, I think, perceive much of the intrinsic character of the feudal relation, though in a less mature and systematic shape than it assumed after the Norman conquest.[93]

THE ANGLO-NORMAN CONSTITUTION

It is deemed by William of Malmesbury an extraordinary work of Providence that the English should have given up all for lost after the battle of Hastings, where only a small though brave

[90] "Hist. Ramsey," p. 454.

[91] P. 118. This is the earliest allusion, if I am not mistaken, to territorial jurisdiction in the Saxon laws. Probably it was not frequent till near the end of the tenth century.

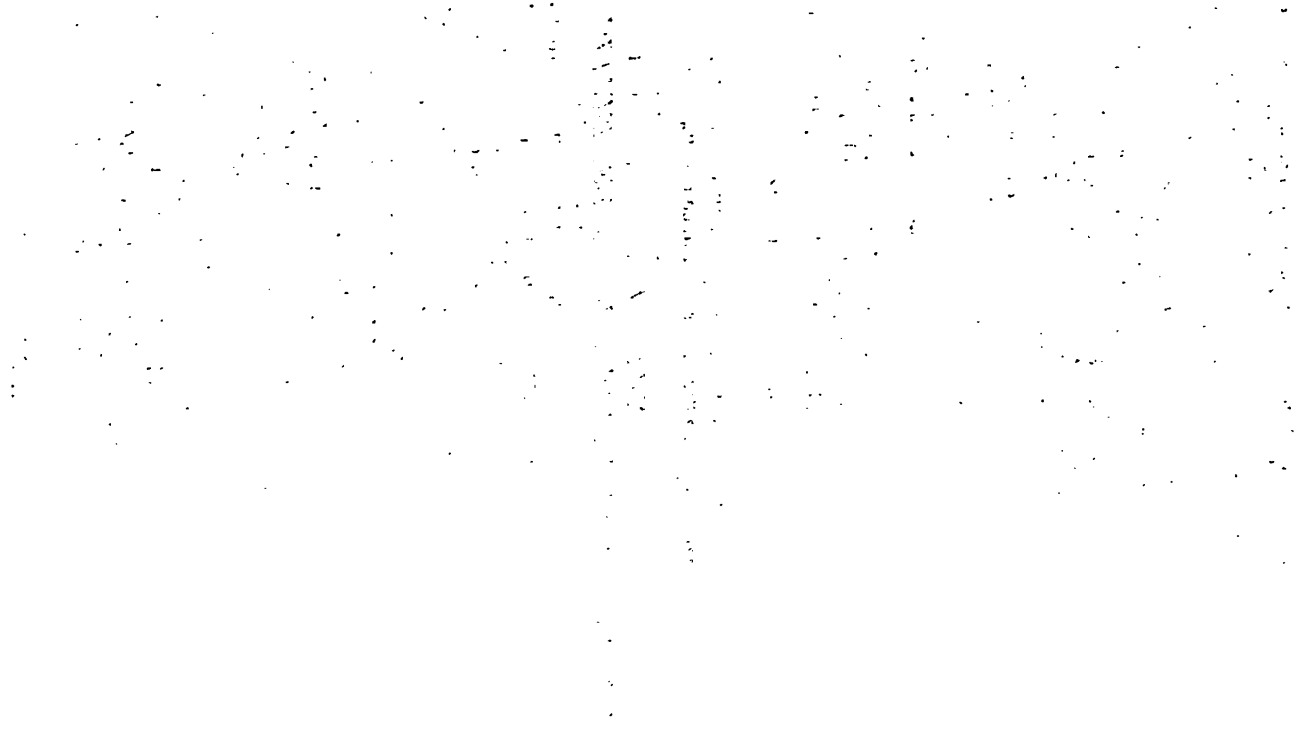
Mr. Kemble is of opinion that the words granting territorial jurisdiction do not occur in any genuine charter before the Confessor. ("Codex Diplom.," i, 43.) They are of constant occurrence in those of the first Norman reigns. But the Normans did not understand them, and the words are often misspelled. He thinks, therefore, that the rights were older than the conquest, and accounts for the rare mention of them by the somewhat unsatisfactory supposition that they were so inherent in the possession of land as not to require particular notice. (See Spence, "Equit. Juris.," pp. 64, 68.)

[92] Feodum twice occurs in the testament of Alfred; but it does not appear to be used in its proper sense, nor do I apprehend that instrument to have been originally written in Latin. It was much more consonant to Alfred's practice to employ his own language.

[93] It will probably be never disputed again that lands were granted by a military tenure before the conquest. Thus, besides the proofs in the text, in the laws of Canute (c. 78): "And the man who shall flee from his lord or from his comrade by reason of his cowardice, be it in the shipfyrd, be it in the landfyrd, let him forfeit all he owns, and his own life; and let the lord seize his possessions, and his land which he previously gave him; and if he have bôcland, let that go into the king's hands." ("Ancient Laws," p. 180.) And we read of lands called hlafordsgifu, lord's gift. ("Leges Ethelred I," "Ancient Laws," p. 125.) But these were not always feudal, or even hereditary; they were what was called on the Continent præstariæ,

DEPARTURE OF THE NORMANS TO INVADE ENGLAND.

Photogravure from a painting by Albert Maignan.



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army had perished.[94] It was, indeed, the conquest of a great kingdom by the prince of a single province, an event not easily paralleled, where the vanquished were little, if at all, less courageous than their enemies, and where no domestic factions exposed the country to an invader. Yet William was so advantageously situated that his success seems neither unaccountable nor any matter of discredit to the English nation. The heir of the house of Cerdic had been already set aside at the election of Harold; and his youth, joined to a mediocrity of understanding which excited neither esteem nor fear,[95] gave no encouragement to the scheme of placing him upon the throne in those moments of imminent peril which followed the battle of Hastings. England was peculiarly destitute of great men. The weak reigns

granted for life or for a certain term; and this, as it appears to me, may have been the proper meaning of the term læn-lands.

But the general tenure of lands was still allodial. Taini lex est, says a curious document on the rights—that is, obligations—of different ranks, published by Mr. Thorpe, ut sit dignus rectitudine testamenti sui (his boc-rightes wyrthe, that is, perhaps, bound to the duties implied by the deed which creates his estates), et ut ita faciat pro terrâ suâ, scilicet expeditionem burhbotam et brigbotam. Et de multis terris majus landirectum exsurgit ad bannum regis, etc., p. 185. Here we find the well-known trinoda necessitas of allodial land, with other contingent liabilities imposed by grant or usage.*

We may probably not err very much in supposing that the state of tenures in England under Canute or the Confessor was a good deal like those in France under Charlemagne or Charles the Bald—an allodial trunk with numerous branches of feudal benefice grafted into it. But the conversion of the one mode of tenure into the other, so frequent in France, does not appear by evidence to have prevailed on this side of the Channel.

I will only add here that Mr. Spence, an authority of great weight, maintains a more complete establishment of the feudal polity before the conquest than I have done (p. 48). This is a subject on which it is hard to lay down a definite line. But I must protest against my learned friend's derivation of the feudal system from "the aristocratic principle that prevailed in the Roman dominions while the republic endured, and which was incorporated with the principles of despotism introduced during the empire." It is because the aristocratic principle could not be incorporated with that of despotism that I conceive the feudal system to have been incapable of development, whatever inchoate rudiments of it may be traced, until a powerful territorial aristocracy had rendered despotism no longer possible. [1847.]

[94] Malmsbury, p. 53. And Henry of Huntingdon says emphatically, Millesimo et sexagesimo sexto anno gratiæ, perfecit dominator Deus de gente Anglorum quod diu cogitaverat. Genti namque Normannorum asperæ et callidæ tradidit eos ad exterminandum (p. 210).

[95] Edgar, after one or two ineffectual attempts to recover the kingdom, was treated by William with a kindness which could only have proceeded from contempt of his understanding; for he was not wanting in courage. He became the intimate friend of Robert, Duke of Normandy, whose fortunes, as well as character, much resembled his own.

* Mr. Kemble has printed a charter of Cenulf, King of Mercia, to the Abbey of Abingdon, in 820, without the asterisk of spuriousness ("Codex Diplom.," i, 269), and it is quoted by Sir F. Palgrave (vol. i, p. 159) in proof of military tenures. The expression, however, expeditionem cum duodecim vassallis, et totidem scutis exerceant, seems not a little against its authenticity. The former has observed that the testamentary documents before the conquest, made by men who were under a superior lord, contain a clause of great interest—namely, an earnest prayer to the lord that he will permit the will to stand according to the disposition of the testator, coupled not infrequently with a legacy to him on condition of his so doing, or to some person of influence about him for intercession on the testator's behalf. And hence he infers that, "as no man supplicates for that which he is of his own right entitled to enjoy, it appears as if these great vassals of the crown had not the power of disposing of their lands and chattels but as the king might permit; and, in the strict construction of the bond between the king and them, all that they gained in his service must be taken to fall into his hands after their death." (Introduction to "Cod. Dip.," p. 111.) This inference seems hardly borne out by the premises: a man might sometimes be reduced to supplicate a superior for that which he had a right to enjoy.

of Ethelred and Edward had rendered the government a mere oligarchy, and reduced the nobility into the state of retainers to a few leading houses, the representatives of which were every way unequal to meet such an enemy as the Duke of Normandy. If, indeed, the concurrent testimony of historians does not exaggerate his forces, it may be doubted whether England possessed military resources sufficient to have resisted so numerous and well-appointed an army.[96]

This forlorn state of the country induced, if it did not justify, the measure of tendering the crown to William, which he had a pretext or title to claim, arising from the intentions, perhaps the promise, perhaps even the testament of Edward, which had more weight in those times than it deserved, and was at least better than the naked title of conquest. And this, supported by an oath exactly similar to that taken by the Anglo-Saxon kings, and by the assent of the multitude, English as well as Normans, on the day of his coronation, gave as much appearance of a regular succession as the circumstances of the times would permit. Those who yielded to such circumstances could not foresee, and were unwilling to anticipate, the bitterness of that servitude which William and his Norman followers were to bring upon their country.

The commencement of his administration was tolerably equitable. Though many confiscations took place, in order to gratify the Norman army, yet the mass of property was left in the hands

[96] It has been suggested, in the second "Report of a Committee of the Lords' House on the Dignity of a Peer," to which I shall have much recourse in the following pages,* that "the facility with which the conquest had been achieved seems to have been, in part, the consequence of defects in the Saxon institutions, and of the want of a military force similar to that which had then been established in Normandy and in some other parts of the continent of Europe. The adventurers in the army of William were of those countries in which such a military establishment had prevailed" (p. 24). It can not be said, I think, that there were any manifest defects in the Saxon institutions, so far as related to the defence of the country against invasion. It was part of the trinoda necessitas, to which all allodial landholders were bound. Nor is it quite accurate to speak of a military force then established in Normandy, or anywhere else. We apply these words to a permanent body always under arms. This was no attribute of feudal tenure, however the frequency of war, general or private, may have inured the tenants by military service to a more habitual discipline than the thanes of England ever knew. The adventurers in William's army were from various countries, and most of them, doubtless, had served before, but whether as hired mercenaries or no we have probably not sufficient means of determining. The practice of hiring troops does not attract the notice of historians, I believe, in so early an age. We need not, however, resort to this conjecture, since history sufficiently explains the success of William.

* This report I generally quote from that printed in 1819; but in 1829 it was reprinted with corrections. It has been said that these were occasioned by the strictures of Mr. Allen, in the thirty-fifth volume of the "Edinburgh Review," not more remarkable for their learning and acuteness than their severity on the report. The corrections, I apprehend, are chiefly confined to errors of names, dates, and others of a similar kind, which no doubt had been copiously pointed out. But it has not appeared to me that the Lords' Committee have altered, in any considerable degree, the positions upon which the reviewer animadverts. It was hardly, indeed, to be expected that the supposed compiler of the report, the late Lord Redesdale, having taken up his own line of opinion, would abandon it on the suggestions of one whose comments, though extremely able, and often, in the eyes of many, well founded, are certainly not couched in the most conciliatory or respectful language.

of its former possessors. Offices of high trust were bestowed upon Englishmen, even upon those whose family renown might have raised the most aspiring thoughts.[97] But partly through the insolence and injustice of William's Norman vassals, partly through the suspiciousness natural to a man conscious of having overturned the national government, his yoke soon became more heavy. The English were oppressed; they rebelled, were subdued, and oppressed again. All their risings were without concert, and desperate; they wanted men fit to head them, and fortresses to sustain their revolt.[98] After a very few years they sank in despair, and yielded for a century to the indignities of a comparatively small body of strangers without a single tumult. So possible is it for a nation to be kept in permanent servitude, even without losing its reputation for individual courage, or its desire of freedom![99]

The tyranny of William displayed less of passion or insolence than of that indifference about human suffering which distinguishes a cold and far-sighted statesman. Impressed by the frequent risings of the English at the commencement of his reign, and by the recollection, as one historian observes, that the mild government of Canute had only ended in the expulsion of the Danish line,[100] he formed the scheme of riveting such fetters upon the conquered nation that all resistance should become impracticable. Those who had obtained honourable offices were successively deprived of them; even the bishops and abbots of English birth were deposed;[101] a stretch of power very singular

[97] "Ordericus Vitalis," p. 520 (in Du Chesne, "Hist. Norm. Script.").

[98] Ordericus notices the want of castles in England as one reason why rebellions were easily quelled (p. 511). Failing in their attempts at a generous resistance, the English endeavoured to get rid of their enemies by assassination, to which many Normans became victims. William, therefore, enacted that in every case of murder, which strictly meant the killing of any one by an unknown hand, the hundred should be liable in a fine, unless they could prove the person murdered to be an Englishman. This was tried by an inquest upon what was called a presentment of Englishry. But from the reign of Henry II, the two nations having been very much intermingled, this inquiry, as we learn from the "Dialogue de Scaccario," p. 26, ceased; and in every case of a freeman murdered by persons unknown the hundred was fined. (See, however, Bracton, l. iii. c. 15.)

[99] The brave resistance of Hereward in the fens of Lincoln and Cambridge is well told by M. Thierry, from Ingulfus and Gaimar. ("Conquête d'Anglet. par les Normands," vol. ii, p. 168.) Turner had given it in some detail from the former. Hereward ultimately made his peace with William, and recovered his estate. According to Ingulfus, he died peaceably, and was buried at Croyland; according to Gaimar, he was assassinated in his house by some Normans. The latter account is confirmed by an early chronicler, from whom an extract is given by Mr. Wright. A more detailed memoir of Hereward ("De Gestis Herewardi Saxonis") is found in the chartulary of Swaffham Abbey, now preserved in Peterborough Cathedral, and said to be as old as the twelfth century. Mr. Wright published it in 1838, from a copy in the library of Trinity College, Cambridge. If the author is to be believed, he had conversed with some companions of Hereward. But such testimony is often feigned by the mediæval semi-romancers. Though the writer appears to affect a different origin, he is too full of Anglo-Saxon sympathies to be disguised; and, in fact, he has evidently borrowed greatly from exaggerated legends, perhaps metrical, current among the English, as to the early life of Hereward, to which Ingulfus, or whoever personated him, cursorily alludes.

[100] Malmsbury, p. 104.

[101] Hoveden, p. 453. This was done with the concurrence and sanction of the Pope Alexander II, so that the stretch of power was by Rome rather than by

in that age. Morcar, one of the most illustrious English, suffered perpetual imprisonment. Waltheoff, a man of equally conspicuous birth, lost his head upon a scaffold by a very harsh if not iniquitous sentence. It was so rare in those times to inflict judicially any capital punishment upon persons of such rank that his death seems to have produced more indignation and despair in England than any single circumstance. The name of Englishman was turned into a reproach. None of that race for a hundred years were raised to any dignity in the state or Church.[102] Their language and the characters in which it was written were rejected as barbarous; in all schools, if we trust an authority often quoted, children were taught French, and the laws were administered in no other tongue.[103] It is well known that this

William. It must pass for a gross violation of ecclesiastical as well as of national rights, and Lanfranc can not be reckoned, notwithstanding his distinguished name, as any better than an intrusive bishop. He showed his arrogant scorn of the English nation in another and rather a singular manner. They were excessively proud of their national saints, some of whom were little known, and whose barbarous names disgusted Italian ears. Angli inter quos vivimus, said the foreign priests, quosdam sibi instituerunt sanctos, quorum incerta sunt merita. This might be true enough; but the same measure should have been meted to others. (Thierry, vol. ii, p. 158, edit. 1830.) The Norman bishops, and the primate especially, set themselves to disparage, and, in fact, to dispossess, St. Aldhelm, St. Elfig, and, for aught we know, St. Swithin, St. Werburg, St. Ebb, and St. Alphage: names, it must be owned,

"That would have made Quintilian stare and gasp."

We may judge what the eminent native of Pavia thought of such a hagiology. The English Church found herself, as it were, with an attainted peerage. But the calender withstood these innovations.

Mr. Turner, in his usual spirit of panegyric, says: "He (William) made important changes among the English clergy; he caused Stigand and others to be deposed, and he filled their places with men from Normandy and France, who were distinguished by the characters of piety, decorous morals, and a love of literature. This measure was an important addition to the civilization of the island," etc. ("Hist. of England," vol. i, p. 104.) Admitting this to be partly true, though he would have found by no means so favourable an account of the Norman prelates in "Ordericus Vitalis," if he had read a few pages beyond the passages to which he refers, is it consonant to historical justice that a violent act, like the deposition of almost all the Anglo-Saxon hierarchy, should be spoken of in a tone of praise, which the whole tenor of the paragraph conveys?

[102] Becket is said to have been the first Englishman who reached any considerable dignity. (Lord Littleton's "Hist. of Henry II," vol. ii, p. 22.) And Eadmer declares that Henry I would not place a single Englishman at the head of a monastery. Si Anglus erat, nulla virtus, ut honore aliquo dignus judicaretur, eum poterat adjuvare (p. 110).

[103] Ingulfus, p. 61. Tantum tunc Anglicos abominati sunt, ut quantocunque merito pollerent, de dignitatibus repellebantur; et multo minus habiles alienigenæ de quâcunque aliâ natione, quæ sub cœlo est, extitissent, gratanter assumerentur. Ipsum etiam idioma tantum abhorrebant, quod leges terræ, statutaque Anglicorum regum linguâ Gallicâ tractarentur; et pueris etiam in scholis principiâ literarum grammatica Gallicè, ac non Anglicè traderentur; modus etiam scribendi Anglicus omitteretur, et modus Gallicus in chartis et in libris omnibus admitteretur.

But the passage in Ingulfus, quoted in support of this position, has been placed by Sir F. Palgrave among the proofs that we have a forgery of the fourteenth century in that historian, the facts being in absolute contradiction to him. "Before the reign of Henry III we can not discover a deed or law drawn or composed in French. Instead of prohibiting the English language, it was employed by the Conqueror and his successors in their charters until the reign of Henry II, when it was superseded, not by the French, but by the Latin language, which had been gradually gaining or rather regaining ground." ("Edinb. Rev.," xxxiv, 262.) "The Latin language had given way in a great measure, from the time of Canute, to the vernacular Anglo-Saxon. Several charters in the latter language occur before; but for fifty years ending with the conquest, out of 254 (published in the fourth volume of the "Codex Diplomaticus"), 137 are in Anglo-Saxon, and only 117 in Latin." (Kemble's preface, p. 6.)

If I have rightly translated, in the text of Ingulfus, leges tractarentur by administered, the falsehood is manifest; since

use of French in all legal proceedings lasted till the reign of Edward III. Several English nobles, desperate of the fortunes of their country, sought refuge in the court of Constantinople, and approved their valour in the wars of Alexius against another Norman conqueror, scarcely less celebrated than their own, Robert Guiscard. Under the name of Varangians, those true and faithful supporters of the Byzantine Empire preserved to its dissolution their ancient Saxon idiom.[104]

An extensive spoliation of property accompanied these revolutions. It appears by the great national survey of "Doomsday Book," completed near the close of the Conqueror's reign,[105] that the tenants in capite of the crown were generally foreigners. Undoubtedly there were a few left in almost every county who still enjoyed the estates which they held under Edward the Confessor, free from any superiority but that of the crown, and were denominated, as in former times, the king's thanes.[106] Cospatric, son perhaps of one of that name who had possesesd the earldom of Northumberland, held forty-one manors in Yorkshire, though many of them are stated in "Doomsday" to be waste. But inferior freeholders were much less disturbed in their estates than the higher class. Brady maintains that the English had suffered universally a deprivation of their lands. But the valuable labours of Sir Henry Ellis, in presenting us with a complete analysis of "Doomsday Book," afford an opportunity, by his list of mesne tenants at the time of the survey, to form some approximation to the relative numbers of English and foreigners holding manors

the laws were administered in the county and hundred courts, and certainly not there in French. I really do not perceive how this passage could have been written by Ingulfus, who must have known the truth; at all events, his testimony must be worth little on any subject if he could so palpably misrepresent a matter of public notoriety. The supposition of entire forgery is one which we should not admit without full proof; but, in this instance, there are perhaps fewer difficulties on this side than on that of authenticity.

[104] Gibbon, vol. x, p. 223. No writer, except perhaps the Saxon chronicler, is so full of William's tyranny as Ordericus Vitalis. See particularly pp. 507, 512, 514, 521, 523, in Du Chesne, "Hist. Norm. Script." Ordericus was an Englishman, but passed at ten years old, A. D. 1084, into Normandy, where he became professed in the monastery of Eu. (Ibid., p. 924.)

[105] The regularity of the course adopted when this record was compiled is very remarkable, and affords a satisfactory proof that the business of the government was well conducted, and with much less rudeness than is usually supposed. The commissioners were furnished with interrogatories, upon which they examined the jurors of the shire and hundred, and also such other witnesses as they thought expedient.

Hic subscribitur inquisicio terrarum quomodo Barones Reges inquirunt, videlicet, per sacramentum vicecomitis Sciræ et omnium Baronum et eorum Francigenarum et tocius centuriatus—presbiteri præpositi VI villani uniuscujusque villæ [sic].—Deinde quomodo vocatur mansio, quis tenuit eam tempore Regis Edwardi, quis modo tenet, quot hidæ, quot carrucatæ in domino quot homines, quot villani, quot cotarii, quot servi, quot liberi homines, quot sochemanni, quantum silvæ, quantum prati, quot pascuorum, quot molidenæ, quot piscinæ, quantum est additum vel ablatum, quantum valebat totum simul; et quantum modo; quantum ibi quisque liber homo vel sochemanus habuit vel habet. Hoc totum tripliciter, scilicet tempore Regis Ædwardi; et quando Rex Willielmus dedit; et quomodo sit modo, et si plus potest haberi quam habeatur. Isti homines juraverunt (then follow the names). ("Inquisitio Eliensis," p. 497; Palgrave, ii, 444.)

[106] Brady, whose unfairness always keeps pace with his ability, pretends that all these were menial officers of the king's household. But notwithstanding

under the immediate vassals of the crown. The baptismal names (there are rarely any others) are not always conclusive; but, on the whole, we learn by a little practice to distinguish the Norman from the Anglo-Saxon. It would be manifest, by running the eye over some pages of this list, how considerably mistaken is the supposition that few of English birth held entire manors. Though I will not now affirm or deny that they were a majority, they form a large proportion of nearly eight thousand mesne tenants,[107] who are summed up by the diligence of Sir Henry Ellis. And we may presume that they were in a very much greater proportion among the "liberi homines," who held lands, subject only to free services, seldom or never very burdensome. It may be added that many Normans, as we learn from history, married English heiresses, rendered so frequently, no doubt, by the violent deaths of their fathers and brothers, but still transmitting ancient rights, as well as native blood, to their posterity.

This might induce us to suspect that, great as the spoliation must appear in modern times, and almost completely as the nation was excluded from civil power in the Commonwealth, there is some exaggeration in the language of those writers who represent them as universally reduced to a state of penury and servitude. And this suspicion may be in some degree just. Yet these writers, and especially the most English in feeling of them all, M. Thierry, are warranted by the language of contemporary authorities. An important passage in the "Dialogus de Scaccario," written toward the end of Henry III's reign, tends greatly to diminish the favourable impression which the Saxon names of so many mesne tenants in "Doomsday Book" would create. If we may trust Gervase of Tilbury, author of this little treatise, the estates of those who had borne arms against William were alone confiscated, though the others were subjected to the feudal superiority of a Norman lord. But when these lords abused their power to dispossess the native tenants, a clamour was raised by the English, and complaint made to the king; by whom it was ordered (if we rightly understand a passage not devoid of obscurity) that the tenant might make a bargain with his lord, so as to secure himself in possession; but that none of the English should have any right of succession, a fresh agreement with the lord being required on every change of tenancy. The Latin words will be found below.[108] This, as here expressed, suggests

the difficulty of disproving these gratuitous suppositions, it is pretty certain that many of the English proprietors in "Doomsday" could not have been of this description. (See pp. 99, 153, 218, 219, and other places.) The question, however, was not worth a battle, though it makes a figure in the controversy of Normans and anti-Normans, between Dugdale and Brady on the one side, and Tyrrell, Petyt, and Attwood on the other.

[107] Ellis's introduction to "Doomsday," vol. ii, p. 811. "The tenants in capite, including ecclesiastical corporations, amounted scarcely to 1,400; the under-tenants were 7,871."

[108] Post regni conquisitionem, post jus-

something like an uncertain relief at the lord's will, and paints the condition of the English tenant as wretchedly dependent. But an instrument published by Spelman, and which will be found in Wilkins, "Leg. Ang.-Sax.," p. 287, gives a more favourable view, and asserts that William permitted those who had taken no part against him to retain their lands, though it appears by the very same record that the Normans did not much regard the royal precept.

But whatever may have been the legal condition of the English mesne tenant, by knight-service or socage (for the case of villeins is, of course, not here considered), during the first two Norman reigns, it seems evident that he was protected by the charter of Henry I in the hereditary possession of his lands, subject only to a "lawful and just relief toward his lord." For this charter is addressed to all the liege men of the crown, "French and English"; and purports to abolish all the evil customs by which the kingdom had been oppressed, extending to the tenants of the barons as well as those of the crown. We can not reasonably construe the language in the "Dialogue of the Exchequer" as if in that late age the English tenant had no estate of fee-simple. If this had been the case, there could not have been the difficulty, which he mentions in another place, of distinguishing among freemen or freeholders (liberi homines) the Norman blood from the Englishman, which frequent intermarriage had produced. He must, we are led to think, either have copied some other writer or made a careless and faulty statement of his own. But, at the present, we are only considering the state of the English in the reign of the Conqueror. And here we have, on the one hand, a manifest proof from the "Doomsday" record that they retained the usufruct, in a very great measure, of the land; and on the other, the strong testimony of contemporary historians to the spoliation and oppression which they endured. It seems, on the whole, most probable that, notwithstanding

tam rebellium subversionem, cum rex ipse regisque proceres loca nova perlustrarent, facta est inquisitio diligens, qui fuerunt qui contra regem in bello dimicantes per fugam se salvaverant. His omnibus et item hæredibus eorum qui in bello occubuerant, spes omnis terrarum et fundorum atque redituum quos ante possederant, præclusa est; magnum namque reputabant frui vitæ beneficio sub inimicis. Verum qui vocati ad bellum necdum convenerant, vel familiaribus vel quibuslibet necessariis occupati negotiis non interfuerant. cum tractu temporis devotis obsequiis gratiam dominorum possedissent sine spe successionis, filii tantum pro voluptate [sic. voluntate?] tamen dominorum possidere cœperunt succedente vero tempore cum dominis suis odiosi passim a possessionibus pellerentur, nec esset qui ablatis restituerit, communis indigenarum ad regem pervenit querimonia, quasi sic omnibus exosi et rebus spoliatis ad alienigenas transire cogerentur. Communicato tantum super his consilio, decretum est, ut quod a dominis suis exigentibus meritis interveniente pactione legitima poterant obtinere, illis inviolabilis jure concederentur; cæterum autem nomine successionis a temporibus subactæ gentis nihil sibi vindicarent. . . . Sic igitur quisquis de gente subacta fundos vel aliquid hujusmodi possidet, non quod ratione successionis deberi sibi videbatur, adeptus est; sed quod solummodo meritis suis exigentibus, vel aliqua pactione interveniente, obtinuit. ("Dial. de Scaccario," c. 10.)

innumerable acts of tyranny, and a general exposure to contumely and insolence, they did, in fact, possess what they are recorded to have possessed by the Norman commissioners of 1085.

The vast extent of the Norman estates in capite is apt to deceive us. In reading of a baron who held forty or fifty or one hundred manors, we are prone to fancy his wealth something like what a similar estate would produce at this day. But if we look at the next words, we shall continually find that some one else held of him; and this was a holding by knight's service, subject to feudal incidents no doubt, but not leaving the seigniory very lucrative, or giving any right of possessory ownership over the land. The real possessions of the tenant of a manor, whether holding in chief or not, consisted in the demesne lands, the produce of which he obtained without cost by the labour of the villeins, and in whatever other payments they might be bound to make in money or kind. It will be remembered, what has been more than once inculcated, that at this time the villani and bordarii—that is, ceorls—were not like the villeins of Bracton and Littleton, destitute of rights in their property; their condition was tending to the lower stage, and with a Norman lord they were in much danger of oppression; but they were "law-worthy," they had a civil status (to pass from one technical style to another), for a century after the conquest.

Yet I would not extenuate the calamities of this great revolution, true though it be that much good was brought out of them, and that we owe no trifling part of what inspires self-esteem to the Norman element of our population and our polity. England passed under the yoke; she endured the arrogance of foreign conquerors; her children, even though their loss in revenue may have been exaggerated, and still it was enormous, became a lower race, not called to the councils of their sovereign, not sharing his trust or his bounty. They were in a far different condition from the provincial Romans after the conquest of Gaul, even if, which is hardly possible to determine, their actual deprivation of lands should have been less extensive. For not only they did not for several reigns occupy the honourable stations which sometimes fell to the lot of the Roman subject of Clovis or Alaric, but they had a great deal more freedom and importance to lose. Nor had they a protecting church to mitigate barbarous superiority; their bishops were degraded and in exile; the footstep of the invader was at their altars; their monasteries were plundered, and the native monks insulted. Rome herself looked with little favour on a church which had preserved some measure of independence. Strange

contrast to the triumphant episcopate of the Merovingian kings![109]

Besides the severities exercised upon the English after every insurrection, two instances of William's unsparing cruelty are well known, the devastation of Yorkshire and of the New Forest. In the former, which had the tyrant's plea, necessity, for its pretext, an invasion being threatened from Denmark, the whole country between the Tyne and the Humber was laid so desolate that for nine years afterward there was not an inhabited village, and hardly an inhabitant, left; the wasting of this district having been followed by a famine, which swept away the whole population.[110] That of the New Forest, though undoubtedly less calamitous in its effects, seems even more monstrous from the frivolousness of the cause.[111] He afforested several other tracts. And these favourite demesnes of the Norman kings were protected by a system of iniquitous and cruel regulations, called the forest laws, which it became afterward a great object with the assertors of liberty to correct. The penalty for killing a stag or a boar was loss of eyes; for William loved the great game, says the "Saxon Chronicle," as if he had been their father.[112]

A more general proof of the ruinous oppression of William the Conqueror may be deduced from the comparative condition of the English towns in the reign of Edward the Confessor, and at the compilation of "Doomsday." At the former epoch there were in York 1,607 inhabited houses, at the latter 967; at the former there were in Oxford 721, at the latter 243; of 172 houses

[109] The oppression of the English during the first reigns after the conquest is fully described by the Norman historians themselves, as well as by the "Saxon Chronicle." Their testimonies are well collected by M. Thierry, in the second volume of his valuable history.

[110] Malmsbury, p. 103; Hoveden, p. 451; Orderic. Vitalis, p. 514. The desolation of Yorkshire continued in Malmsbury's time, sixty or seventy years afterward; nudum omnium solum usque ad hoc etiam tempus.

[111] Malmsbury, p. 111.

[112] "Chron. Saxon.," p. 191. M. Thierry conjectures that these severe regulations had a deeper motive than the mere preservation of game, and were intended to prevent the English from assembling in arms on pretence of the chase (vol. ii, p. 257). But perhaps this is not necessary. We know that a disproportionate severity has often guarded the beasts and birds of chase from depredation.

Allen admits ("Edinburgh Rev." xxvi, 355) that the forest laws seem to have been enacted by the king's sole authority; or, as we may rather say, that they were considered as a part of his prerogative. The royal forests were protected by extraordinary penalties even before the conquest. "The royal forests were part of the demesne of the crown. They were not included in the territorial divisions of the kingdom, civil or ecclesiastical, nor governed by the ordinary courts of law, but were set apart for the recreation and diversion of the king, as waste lands, which he might use and dispose of at pleasure." "Forestæ," says Sir Henry Spelman, "nec villas propriè accepere, nec parochias, nec de corpore alicujus comitatûs vel episcopatûs habitæ sunt, sed extraneum quiddam et feris datum, ferino jure, non civili, non municipali, fruebantur; regem in omnibus agnoscentes dominum unicum et ex arbitrio disponentem." Mr. Allen quotes afterward a passage from the "Dialogus de Scaccario," which indicates the peculiarity of the forest laws: "Forestarum ratio, pœna quoque vel absolutio delinquentium in eas, sive pecuniaria fuerit sive corporalis, seorsim ab aliis regni judiciis secernitur, et solius regis arbitrio, vel cujuslibet familiaris ad hoc specialiter deputati subjicitur. Legibus quidem propriis subsistit; quas non communi regni jure, sed voluntaria principum institutione subnixas dicunt." The forests were, to use a word in rather an opposite sense to the usual, an oasis of despotism in the midst of the old common law.

in Dorchester, 100 were destroyed; of 243 in Derby, 103; of 487 in Chester, 205. Some other towns had suffered less, but scarcely any one fails to exhibit marks of a decayed population. As to the relative numbers of the peasantry and value of lands at these two periods, it would not be easy to assert anything without a laborious examination of "Doomsday Book."[113]

The demesne lands of the crown, extensive and scattered over every county, were abundantly sufficient to support its dignity and magnificence;[114] and William, far from wasting this revenue by prodigal grants, took care to let them at the highest rate to farm, little caring how much the cultivators were racked by his tenants.[115] Yet his exactions, both feudal and in the way of tallage from his burgesses and the tenants of his vassals, were almost as violent as his confiscations. No source of income was neglected by him, or indeed by his successors, however trifling, unjust, or unreasonable. His revenues, if we could trust Ordericus Vitalis, amounted to 1,060*l.* a day. This, in mere weight of silver, would be equal to nearly 1,200,000*l.* a year at present. But the arithmetical statements of these writers are not implicitly to be relied upon. He left at his death a treasure of 60,000*l.*, which, in conformity to his dying request, his successor distributed among the church and poor of the kingdom, as a feeble expiation of the crimes by which it had been accumulated;[116] an act of disinterestedness which seems to prove that Rufus, amid all his vices, was not destitute of better feelings than historians have ascribed to him. It might appear that William had little use for his extorted wealth. By the feudal constitution, as established during his reign, he commanded the service of a vast army at his own expense, either for domestic or continental warfare. But this was not sufficient for his purpose; like other tyrants, he put greater trust in mercenary obedience. Some of his predecessors had kept bodies of Danish troops in pay; partly to be secure against their hostility, partly from the convenience of a regular army, and the love which princes bear to it. But William carried this to a much greater length. He had always stipendiary soldiers at his command. Indeed, his army at the conquest could not have been swollen to such numbers by any other means. They were drawn, by the allurement of high pay, not from France and Brittany alone, but Flanders, Germany, and even Spain. When Canute of Denmark threatened

[113] The population recorded in "Doomsday" is about 283,000; which, in round numbers, allowing for women and children, may be called about a million. (Ellis's introduction to "Doomsday," vol. ii. p. 511.)

[114] They consisted of 1,422 manors. (Littleton's "Henry II," vol. ii, p. 288.)

[115] "Chron. Saxon.," p. 188.

[116] Huntingdon, p. 371. Ordericus Vitalis puts a long penitential speech into William's mouth on his death-bed (p. 66). Though this may be his invention, yet facts seem to show the compunction of the tyrant's conscience.

an invasion in 1085, William, too conscious of his own tyranny to use the arms of his English subjects, collected a mercenary force so vast that men wondered, says the "Saxon Chronicler," how the country could maintain it. This he quartered upon the people, according to the proportion of their estates.[117]

Whatever may be thought of the Anglo-Saxon tenures, it is certain that those of the feudal system were thoroughly established in England under the Conqueror. It has been observed, in another part of this work, that the rights, or feudal incidents, of wardship and marriage were more common in England and Normandy than in the rest of France. They certainly did not exist in the former before the conquest; but whether they were ancient customs of the latter can not be ascertained, unless we had more incontestable records of its early jurisprudence. For the "Great Customary" of Normandy is a compilation as late as the reign of Richard Cœur-de-Lion, when the laws of England might have passed into a country so long and intimately connected with it. But there appears reason to think that the seizure of the lands in wardship, the selling of the heiress in marriage, were originally deemed rather acts of violence than conformable to law. For Henry I's charter expressly promises that the mother, or next of kin, shall have the custody of the lands as well as person of the heir.[118] And as the charter of Henry II refers to and confirms that of his grandfather, it seems to follow that what is called guardianship in chivalry had not yet been established. At least it is not till the assize of Clarendon, confirmed at Northampton in 1176,[119] that the custody of the heir is clearly reserved to the lord. With respect to the right of consenting to the marriage of a female vassal, it seems to have been, as I have elsewhere observed, pretty general in feudal tenures. But the sale of her person in marriage, or the exaction of a sum of money in lieu of this scandalous tyranny, was only the law of England, and was not perhaps fully authorized as such till the statute of Merton in 1236.

One innovation made by William upon the feudal law is very deserving of attention. By the leading principle of feuds, an oath of fealty was due from the vassal to the lord of whom he immediately held his land, and to no other. The King of France, long after this period, had no feudal and scarcely any royal authority over the tenants of his own vassals. But William received at Salisbury, in 1085, the fealty of all landholders in England, both those who held in chief and their tenants;[120] thus

[117] "Chron. Saxon.," p. 185; Ingulfus, p. 79.

[118] Terræ et liberorum custos erit sive uxor, sive alius propinquorum, qui justus esse debebit; et præcipio ut barones mei similiter se contineant ergà filios vel filias vel uxores hominum meorum. ("Leges Anglo-Saxonicæ," p. 234.)

[119] "Leges Anglo-Saxonicæ," p. 330.

[120] "Chron. Saxon.," p. 187. The oath

breaking in upon the feudal compact in its most essential attribute, the exclusive dependence of a vassal upon his lord. And this may be reckoned among the several causes which prevented the continental notions of independence upon the crown from ever taking root among the English aristocracy.

The best measure of William was the establishment of public peace. He permitted no rapine but his own. The feuds of private revenge, the lawlessness of robbery, were repressed. A girl laden with gold, if we believe some ancient writers, might have passed safely through the kingdom.[121] But this was the tranquility of an imperious and vigilant despotism, the degree of which may be measured by these effects, in which no improvement of civilization had any share. There is assuredly nothing to wonder at in the detestation with which the English long regarded the memory of this tyrant.[122] Some advantages undoubtedly, in the course of human affairs, eventually sprang from the Norman conquest. The invaders, though without perhaps any intrinsic superiority in social virtues over the native English, degraded and barbarous as these are represented to us, had at least that exterior polish of courteous and chivalric manners, and that taste for refinement and magnificence, which serve to elevate a people from mere savage rudeness. Their buildings, sacred as well as domestic, became more substantial and elegant. The learning of the clergy, the only class to whom that word could at all be applicable, became infinitely more respectable in a short time after the conquest. And though this may by some be ascribed to the general improvements of Europe in that point during the twelfth century, yet I think it was partly owing to the more free intercourse with France, and the closer dependence upon Rome, which that revolution produced. This circumstance was, however, of no great moment to the English of those times, whose happiness could hardly be effected by the theological reputation of Lanfranc and Anselm. Perhaps the chief benefit which the natives of that generation derived from the government of William and his successors, next to that of a more vigilant police, was the security they found from invasion on the side of Denmark and Norway. The high reputation of the Conqueror and his sons, with the regular organization of a feudal militia, deterred those predatory armies

of allegiance or fealty, for they were in spirit the same, had been due to the king before the conquest; we find it among the laws of Edmund. (Allen's "Inquiry," p. 68.) It was not, therefore, likely that William would surrender such a tie upon his subjects. But it had also been usual in France under Charlemagne, and perhaps later.

[121] "Chron. Saxon.," p. 190; M. Paris, p. 10. I will not omit one other circumstance, apparently praiseworthy, which Ordericus mentions of William that he tried to learn English, in order to render justice by understanding every man's complaint, but failed on account of his advanced age (p. 520). This was in the early part of his reign, before the reluctance of the English to submit had exasperated his disposition.

[122] W. Malmsb., præf. ad l. iii.

which had brought such repeated calamity on England in former times.

The system of feudal policy, though derived to England from a French source, bore a very different appearance in the two countries. France, for about two centuries after the house of Capet had usurped the throne of Charlemagne's posterity, could hardly be deemed a regular confederacy, much less an entire monarchy. But in England a government, feudal indeed in its form, but arbitrary in its exercise, not only maintained subordination, but almost extinguished liberty. Several causes seem to have conspired toward this radical difference. In the first place, a kingdom comparatively small is much more easily kept under control than one of vast extent. And the fiefs of Anglo-Norman barons after the conquest were far less considerable, even relatively to the size of the two countries, than those of France. The Earl of Chester held, indeed, almost all that county;[123] the Earl of Shrewsbury, nearly the whole of Salop. But these domains bore no comparison with the dukedom of Guienne or the county of Toulouse. In general, the lordships of William's barons, whether this were owing to policy or accident, were exceedingly dispersed. Robert, Earl of Moreton, for example, the most richly endowed of his followers, enjoyed two hundred and forty-eight manors in Cornwall, fifty-four in Sussex, one hundred and ninety-six in Yorkshire, ninety-nine in Northamptonshire, besides many in other counties.[124] Estates so disjoined, however immense in their aggregate, were ill calculated for supporting a rebellion. It is observed by Madox that the knight's fees of almost every barony were scattered over various counties.

In the next place, these baronial fiefs were held under an actual derivation from the crown. The great vassals of France had usurped their dominions before the accession of Hugh Capet, and barely submitted to his nominal sovereignty. They never intended to yield the feudal tributes of relief and aid, nor did some of them even acknowledge the supremacy of his royal jurisdiction. But the Conqueror and his successors imposed what conditions they would upon a set of barons who owed all to their grants; and as mankind's notions of right are generally founded upon prescription, these peers grew accustomed to endure many burdens, reluctantly indeed, but without that feeling of injury

[123] This was, upon the whole, more like a great French fief than any English earldom. Hugh de Abrincis, nephew of William I, had barons of his own, one of whom held forty-six and another thirty manors. Chester was first called a county palatine under Henry II; but it previously possessed all regalian rights of jurisdiction. After the forfeitures of the house of Montgomery, it acquired all the country between the Mersey and Ribble. Several eminent men inherited the earldom; but upon the death of the most distinguished, Ranulf, in 1232, it fell into a female line, and soon escheated to the crown. (Dugdale's "Baronage," p. 45; Littleton's "Henry II," vol. ii, p. 218.)

[124] Dugdale's "Baronage," p. 25.

which would have resisted an attempt to impose them upon the vassals of the French crown. For the same reasons the barons of England were regularly summoned to the great council, and by their attendance in it, and concurrence in the measures which were there resolved upon, a compactness and unity of interest were given to the monarchy which were entirely wanting in that of France.

We may add to the circumstances that rendered the crown powerful during the first century after the conquest an extreme antipathy of the native English toward their invaders. Both William Rufus and Henry I made use of the former to strengthen themselves against the attempts of their brother Robert, though they forgot their promises to the English after attaining their object.[125] A fact mentioned by Ordericus Vitalis illustrates the advantage which the government found in this national animosity. During the siege of Bridgenorth, a town belonging to Robert de Belesme, one of the most turbulent and powerful of the Norman barons, by Henry I in 1102, the rest of the nobility deliberated together, and came to the conclusion that if the king could expel so distinguished a subject, he would be able to treat them all as his servants. They endeavoured, therefore, to bring about a treaty; but the English part of Henry's army, hating Robert de Belesme as a Norman, urged the king to proceed with the siege; which he did, and took the castle.[126]

Unrestrained, therefore, comparatively speaking, by the aristocratic principles which influenced other feudal countries, the administration acquired a tone of rigour and arbitrariness under William the Conqueror which, though sometimes perhaps a little mitigated, did not cease during a century and a half. For the first three reigns we must have recourse to historians; whose language, though vague, and perhaps exaggerated, is too uniform and impressive to leave a doubt of the tyrannical character of the government. The intolerable exactions of tribute, the rapine of purveyance, the iniquity of royal courts, are continually in their mouths. "God sees the wretched people," says the "Saxon Chronicler," "most unjustly oppressed; first they are despoiled of their possessions, then butchered. This was a grievous year (1124). Whoever had any property lost it by heavy taxes and unjust decrees."[127] The same ancient chronicle, which appears to have been continued from time to time in the abbey of Peterborough, frequently utters similar notes of lamentation.

[125] W. Malmsbury, pp. 120 et 156; R. Hoveden, p. 461; "Chron. Saxon.," p. 194.

[126] Du Chesne, "Script. Norman.," p. 807.

[127] "Chron. Saxon.," p. 228. Non facile potest narrari miseria, says Roger de Hoveden, quam sustinuit illo tempore [circ. ann. 1103] terra Anglorum propter regias exactiones (p. 470).

From the reign of Stephen, the miseries of which are not to my immediate purpose, so far as they proceeded from anarchy and intestine war,[128] we are able to trace the character of government by existing records.[129] These, digested by the industrious Madox into his "History of the Exchequer," give us far more insight into the spirit of the constitution, if we may use such a word, than all our monkish chronicles. It was not a sanguinary despotism. Henry II was a prince of remarkable clemency; and none of the Conqueror's successors were as grossly tyrannical as himself. But the system of rapacious extortion from their subjects prevailed to a degree which we should rather expect to find among Eastern slaves than that high-spirited race of Normandy whose renown then filled Europe and Asia. The right of wardship was abused by selling the heir and his land to the highest bidder. That of marriage was carried to a still grosser excess. The Kings of France, indeed, claimed the prerogative of forbidding the marriage of their vassals' daughters to such persons as they thought unfriendly or dangerous to themselves; but I am not aware that they ever compelled them to marry, much less that they turned this attribute of sovereignty into a means of revenue. But in England, women and even men, simply as tenants in chief, and not as wards, fined to the crown for leave to marry whom they would, or not to be compelled to marry any other.[130] Towns not only fined for original grants of franchises, but for repeated confirmations. The Jews paid exorbitant sums for every common right of mankind, for protection, for justice. In return they were sustained against their Christian debtors in demands of usury, which superstition and tyranny rendered enormous.[131] Men fined for the king's goodwill, or that he would remit his anger, or to have his mediation with their adversaries. Many fines seem, as it were, imposed in sport, if we look to the cause; though their extent, and the solemnity with which they were recorded, prove the humour to have been differently relished by the two parties. Thus the Bishop of Winchester paid a tun of good wine for not reminding the king (John) to give a girdle to the Countess of Albe-

[128] The following simple picture of that reign from the "Saxon Chronicle" may be worth inserting: "The nobles and bishops built castles, and filled them with devilish and wicked men, and oppressed the people, cruelly torturing men for their money. They imposed taxes upon towns, and, when they had exhausted them of everything, set them on fire. You might travel a day and not find one man living in a town, nor any land in cultivation. Never did the country suffer greater evils. If two or three men were seen riding up to a town, all its inhabitants left it, taking them for plunderers. And this lasted, growing worse and worse, throughout Stephen's reign. Men said openly that Christ and his saints were asleep" (p. 239).

[129] The earliest record in the Pipe office is that which Madox, in conformity to the usage of others, cites by the name of Magnum Rotulum quinto Stephani. But in a particular dissertation, subjoined to his "History of the Exchequer," he inclines, though not decisively, to refer this record to the reign of Henry I.

[130] Madox, c. 10.

[131] Id., c. 7.

marle; and Robert de Vaux five best palfreys, that the same king might hold his peace about Henry Pinel's wife. Another paid four marks for leave to eat (pro licentiâ comedendi). But of all the abuses which deformed the Anglo-Norman government, none was so flagitious as the sale of judicial redress. The king, we are often told, is the fountain of justice; but in those ages it was one which gold alone could unseal. Men fined to have right done them; to sue in a certain court; to implead a certain person; to have restitution of land which they had recovered at law.[132] From the sale of that justice which every citizen has a right to demand, it was an easy transition to withhold or deny it. Fines were received for the king's help against the adverse suitor—that is, for perversion of justice, or for delay. Sometimes they were paid by opposite parties, and, of course, for opposite ends. These were called counter-fines; but the money was sometimes, or, as Lord Littleton thinks, invariably, returned to the unsuccessful suitor.[133]

Among a people imperfectly civilized the most outrageous injustice toward individuals may pass without the slightest notice, while in matters affecting the community the powers of government are exceedingly controlled. It becomes, therefore, an important question what prerogative these Norman kings were used to exercise in raising money and in general legislation. By the prevailing feudal customs the lord was entitled to demand a pecuniary aid of his vassals in certain cases. These were, in England, to make his eldest son a knight, to marry his eldest daughter, and to ransom himself from captivity. Accordingly, when such circumstances occurred, aids were levied by the crown upon its tenants, at the rate of a mark or a pound for every knight's fee.[134] These aids, being strictly due in the prescribed cases, were taken without requiring the consent of Parliament. Escuage, which was a commutation for the personal service of military tenants in war, having rather the appearance of an indulgence than an imposition, might reasonably be levied by the king.[135] It was not till the charter of John that escuage became a parliamentary assessment; the custom of commuting service having then grown general, and the rate of commutation being variable.

[132] Madox, chaps. 12 and 13.

[133] The most opposite instances of these exactions are well selected from Madox by Hume, appendix ii, upon which account I have gone less into detail than would otherwise have been necessary.

[134] The reasonable aid was fixed by the statute of Westminster I, 3 Edward I, c. 36, at twenty shillings for every knight's fee, and as much for every 20*l.* value of land held by socage. The aid pour fair fitz chevalier might be raised when he entered into his fifteenth year; pour fille marier, when she reached the age of seven.

[135] Fit interdum, ut imminente vel insurgente in regnum hostium machinatione, decernat rex de singulis feodis militum summam aliquam solvi, marcam scilicet, vel libram unam; unde militibus stipendia vel donativa succedant. Mavult enim princeps stipendiarios quàm domesticos bellicis exponere casibus. Hæc itaque summa, quia nomine scutorum solvitur, scutagium nominatur. ("Dialogus de Scaccario," ad finem; Madox, "Hist. Exchequer," p. 25, edit. in folio.)

None but military tenants could be liable for escuage,[136] but the inferior subjects of the crown were oppressed by tallages. The demesne lands of the king and all royal towns were liable to tallage; an imposition far more rigorous and irregular than those which fell upon the gentry. Tallages were continually raised upon different towns during all the Norman reigns without the consent of Parliament, which neither represented them nor cared for their interests. The itinerant justices in their circuit usually set this tax. Sometimes the tallage was assessed in gross upon a town, and collected by the burgesses; sometimes individually at the judgment of the justices. There was an appeal from an excessive assessment to the barons of the exchequer. Inferior lords might tallage their own tenants and demesne towns, though not, it seems, without the king's permission.[137] Customs upon the import and export of merchandise, of which the prisage of wine—that is, a right of taking two casks out of each vessel—seems the most material, were immemorially exacted by the crown. There is no appearance that these originated with Parliament.[138] Another tax, extending to all the lands of the kingdom, was Danegeld, the ship-money of those times. This name had been originally given to the tax imposed under Ethelred II, in order to raise a tribute exacted by the Danes. It was afterward applied to a permanent contribution for the public defence against the same enemies. But after the conquest this tax is said to have been only occasionally required; and the latest instance on record of its payment is in the 20th of Henry II. Its imposition appears to have been at the king's discretion.[139]

The right of general legislation was undoubtedly placed in the king, conjointly with his great council,[140] or, if the expression be thought more proper, with their advice. So little opposition was found in these assemblies by the early Norman kings that they gratified their own love of pomp, as well as the pride of their barons, by consulting them in every important business. But the limits of legislative power were extremely indefinite. New laws, like new taxes, affecting the community, required the sanction of that assembly which was supposed to represent it; but there was no security for individuals against acts of prerogative, which we should justly consider as most tyrannical. Henry II, the best of these monarchs, banished from England the relations and friends of Becket, to the number of four hundred. At another time he sent over from Normandy an injunction that all

[136] The tenant in capite was entitled to be reimbursed what would have been his escuage by his vassals even if he performed personal service. (Madox, c. 16.)

[137] For the important subject of tallages, see Madox, c. 17.

[138] Madox, c. 18; Hale's "Treatise on the Customs" in Hargrave's "Tracts," vol. i, p. 116.

[139] Henr. Huntingdon, l. v, p. 205; "Dialogus de Scaccario," c. 11; Madox, c. 17; Littleton's "Henry II," vol. ii, p. 170.

[140] Glanvil, "Prologus ad Tractatum de Consuetud."

the kindred of those who obeyed a papal interdict should be banished and their estates confiscated.[141]

The statutes of those reigns do not exhibit to us many provisions calculated to maintain public liberty on a broad and general foundation. And although the laws then enacted have not all been preserved, yet it is unlikely that any of an extensively remedial nature should have left no trace of their existence. We find, however, what has sometimes been called the Magna Charta of William the Conqueror, published by Wilkins from a document of considerable authority.[142] "We will, enjoin, and grant," says the king, "that all freemen of our kingdom shall enjoy their lands in peace, free from all tallage, and from every unjust exaction, so that nothing but their service lawfully due to us shall be demanded at their hands."[143] The laws of the Conqueror, found in Hoveden, are wholly different from those in Ingulfus, and are suspected not to have escaped considerable interpolation.[144] It is remarkable that no reference is made to this concession of William the Conqueror in any subsequent charter. A charter of Henry I, the authenticity of which is undisputed, though it contains nothing specially expressed but a remission of unreasonable reliefs, wardships, and other feudal burdens,[145] proceeds to declare that he gives his subjects the laws of Edward the Confessor, with the emendations made by his father with consent of his barons.[146] The charter of Stephen not only con-

[141] Hoveden, p 496; Littleton, vol. ii, p. 530. The latter says that this edict must have been framed by the king with the advice and assent of his council. But if he means his great council, I can not suppose that all the barons and tenants in capite could have been duly summoned to a council held beyond seas. Some English barons might doubtless have been with the king, as at Verneuil in 1176, where a mixed assembly of English and French enacted laws for both countries. (Benedict. Abbas apud Hume.) So at Northampton, in 1165, several Norman barons voted; nor is any notice taken of this as irregular. (Fitz Stephen, ibid.) So unfixed, or rather unformed, were all constitutional principles. [Note X.]

[142] [Note XI.]

[143] Volumus etiam, ac firmiter præcipimus et concedimus, ut omnes liberi homines totius monarchiæ prædicti regni nostri habeant et teneant terras suas et possessiones suas benè, et in pace, liberè ab omni exactione injustâ, et ab omni tallagio, ita quod nihil ab iis exigatur vel capiatur, nisi servitium suum liberum, quod de jure nobis facere debent, et facere tenentur; et prout statutum est iis, et illis a nobis datum et concessum jure hæreditario in perpetuum per commune concilium totius regni nostri prædicti.

[144] Selden, ad Eadmerum. Hody ("Treatise on Convocations" p. 249) infers from the great alterations visible on the face of these laws that they were altered from the French original by Glanvil.

[145] Wilkins, p. 234. The accession of Henry inspired hopes into the English nation which were not well realized. His marriage with Matilda, "of the rightful English kin," is mentioned with apparent pleasure by the Saxon chronicler under the year 1100. And in a fragment of a Latin treatise on the English laws, praising them with a genuine feeling, and probably written in the earlier part of Henry's reign, the author extols his behaviour toward the people, in contrast with that of preceding times, and bears explicit testimony to the confirmation and amendment of Edward's laws by the Conqueror and by the reigning king—Qui non solum legem regis Eadwardi nobis reddidit, quam omni gaudiorum delectatione suscepimus, sed beati patris ejus emendationibus roboratam propriis institutionibus honestavit. See Cooper on "Public Records" (vol. ii, p. 423), in which very useful collection the whole fragment (for the first time in England) is published from a Cottonian manuscript. Henry ceased not, according to the "Saxon Chronicle," to lay on many tributes. But it is reasonable to suppose that tallages on towns and on his demesne tenants, at that time legal, were reckoned among them.

[146] A great impression is said to have

firms that of his predecessor, but adds, in fuller terms than Henry had used, an express concession of the laws and customs of Edward.[147] Henry II is silent about these, although he repeats the confirmation of his grandfather's charter.[148] The people, however, had begun to look back to a more ancient standard of law. The Norman conquest, and all that ensued upon it, had endeared the memory of their Saxon government. Its disorders were forgotten, or, rather, were less odious to a rude nation, than the coercive justice by which they were afterward restrained.[149] Hence it became the favourite cry to demand the laws of Edward the Confessor; and the Normans themselves, as they grew dissatisfied with the royal administration, fell into these English sentiments.[150] But what these laws were, or more properly, perhaps, these customs subsisting in the Confessor's age, was not very distinctly understood.[151] So far, however, was clear, that the rigorous feudal servitude, the weighty tributes upon poorer freemen, had never prevailed before the conquest. In claiming the laws of Edward the Confessor, our ancestors meant but the redress of grievances, which tradition told them had not always existed.

It is highly probable, independently of the evidence supplied by the charters of Henry I and his two successors, that a sense of oppression had long been stimulating the subjects of so arbitrary a government, before they gave any demonstrations of it sufficiently palpable to find a place in history. But there are certainly no instances of rebellion, or even, as far as we know, of a constitutional resistance in Parliament, down to the reign of Richard I. The revolt of the Earls of Leicester and Norfolk

been made on the barons confederated against John by the production of Henry I's charter, whereof they had been ignorant. (Matt. Paris, p. 212.) But this could hardly have been the existing charter, for reasons alleged by Blackstone. (Introduction to Magna Charta, p. 6.)

[147] Wilkins, "Leges Anglo-Saxon.," p. 310.

[148] Id., p. 318.

[149] The Saxon chronicler complains of a witenagemot, as he calls it, or assizes, held at Leicester in 1124, where forty-four thieves were hanged, a greater number than was ever before known; it was said that many suffered unjustly (p. 228). Mr. Turner translates this differently; but, as I conceive, without attending to the spirit of the context. ("Hist. of Engl.," vol. i, p. 174.)

[150] The distinction between the two nations was pretty well obliterated at the end of Henry II's reign, as we learn from the "Dialogue on the Exchequer," then written: jam cohabitantibus Anglicis et Normannis, et alterutrûm uxores ducentibus vel nubentibus, sic permixtæ sunt nationes, ut vix discerni possit hodie, de liberis loquor, quis Anglicus, quis Normannus sit genere; exceptis duntaxat ascriptitiis qui villani dicuntur, quibus non est liberum obstantibus dominis suis a sui status conditione discedere. Eapropter pene quicunque sic hodie occisus reperitur, ut murdrum punitur, exceptis his quibus certa sunt ut dixmus servilis conditionis indicia (p. 26). [Note XII.]

[151] Non quas tulit, sed quas observaverit, says William of Malmsbury, concerning the Confessor's laws. Those bearing his name in Lambard and Wilkins are evidently spurious, though it may not be easy to fix upon the time when they were forged. Those found in Ingulfus, in the French language, are genuine, though translated from Latin, and were confirmed by William the Conqueror. Neither of these collections, however, can be thought to have any relation to the civil liberty of the subject. It has been deemed more rational to suppose that these longings for Edward's laws were rather meant for a mild administration of government, free from unjust Norman innovations, than any written and definitive system.

against Henry II, which endangered his throne and comprehended his children with a large part of his barons, appears not to have been founded even upon the pretext of public grievances. Under Richard I something more of a national spirit began to show itself. For the king having left his chancellor, William Longchamp, joint regent and justiciary with the Bishop of Durham during his crusade, the foolish insolence of the former, who excluded his coadjutor from any share in the administration, provoked every one of the nobility. A convention of these, the king's brother placing himself at their head, passed a sentence of removal and banishment upon the chancellor. Though there might be reason to conceive that this would not be unpleasing to the king, who was already apprised how much Longchamp had abused his trust, it was a remarkable assumption of power by that assembly, and the earliest authority for a leading principle of our constitution, the responsibility of ministers to Parliament.

In the succeeding reign of John all the rapacious exactions usual to these Norman kings were not only redoubled, but mingled with other outrages of tyranny still more intolerable.[152] These, too, were to be endured at the hands of a prince utterly contemptible for his folly and cowardice. One is surprised at the forbearance displayed by the barons, till they took up arms at length in that confederacy which ended in establishing the Great Charter of Liberties. As this was the first effort toward a legal government, so is it beyond comparison the most important event in our history, except that Revolution without which its benefits would have been rapidly annihilated. The constitution of England has indeed no single date from which its duration is to be reckoned. The institutions of positive law, the far more important changes which time has wrought in the order of society, during six hundred years subsequent to the Great Charter, have undoubtedly lessened its direct application to our present circumstances. But it is still the keystone of English liberty. All that has since been obtained is little more than as confirmation or commentary; and if every subsequent law were to be swept away, there would still remain the bold features that distinguish a free from a despotic monarchy. It has been lately the fashion to depreciate the value of Magna Charta, as if it had sprung from the private ambition of a few selfish barons, and redressed only some feudal abuses. It is, indeed, of little importance by what motives those who obtained it were guided. The real characters of men most distinguished in the transactions

[152] In 1207 John took a seventh of the movables of lay and spiritual persons, cunctis murmurantibus, sed contradicere non audentibus. (Matt. Paris, p. 186, ed. 1684.) But his insults upon the nobility in debauching their wives and daughters were, as usually happens, the most exasperating provocation.

of that time are not easily determined at present. Yet if we bring these ungrateful suspicions to the test, they prove destitute of all reasonable foundation. An equal distribution of civil rights to all classes of freemen forms the peculiar beauty of the charter. In this just solicitude for the people, and in the moderation which infringed upon no essential prerogative of the monarchy, we may perceive a liberality and patriotism very unlike the selfishness which is sometimes rashly imputed to those ancient barons. And, as far as we are guided by historical testimony, two great men, the pillars of our Church and state, may be considered as entitled beyond the rest to the glory of this monument—Stephen Langton, Archbishop of Canterbury, and William, Earl of Pembroke. To their temperate zeal for a legal government, England was indebted during that critical period for the two greatest blessings that patriotic statesmen could confer: the establishment of civil liberty upon an immovable basis, and the preservation of national independence under the ancient line of sovereigns, which rasher men were about to exchange for the dominion of France.

By the Magna Charta of John reliefs were limited to a certain sum according to the rank of the tenant, the waste committed by guardians in chivalry restrained, the disparagement in matrimony of female wards forbidden, and widows secured from compulsory marriage. These regulations, extending to the subvassals of the crown, redressed the worst grievances of every military tenant in England. The franchises of the city of London and of all towns and boroughs were declared inviolable. The freedom of commerce was guaranteed to alien merchants. The Court of Common Pleas, instead of following the king's person, was fixed at Westminster. The tyranny exercised in the neighbourhood of royal forests met with some check, which was further enforced by the Charter of Forests under Henry III.

But the essential clauses of Magna Charta are those which protect the personal liberty and property of all freemen, by giving security from arbitrary imprisonment and arbitrary spoliation. "No freeman" (says the twenty-ninth chapter of Henry III's charter, which, as the existing law, I quote in preference to that of John, the variations not being very material) "shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor send upon him, but by lawful judgment of his peers, or by the law of the land.[158]

[158] Nisi per legale judicium parium suorum, vel per legem terræ. Several explanations have been offered of the alternative clause, which some have referred to judgment by default or demurrer—others to the process of attachment for contempt. Certainly there are many legal procedures besides trial by jury through which a party's goods or person may be taken. But one may

We will sell to no man, we will not deny or delay to any man, justice or right." It is obvious that these words, interpreted by any honest court of law, convey an ample security for the two main rights of civil society. From the era, therefore, of King John's charter, it must have been a clear principle of our constitution that no man can be detained in prison without trial. Whether courts of justice framed the writ of habeas corpus in conformity to the spirit of this clause, or found it already in their register, it became from that era the right of every subject to demand it. That writ, rendered more actively remedial by the statute of Charles II, but founded upon the broad basis, of Magna Charta, is the principal bulwark of English liberty; and if ever temporary circumstances, or the doubtful plea of political necessity, shall lead men to look on its denial with apathy, the most distinguishing characteristic of our constitution will be effaced.

As the clause recited above protects the subject from any absolute spoliation of his freehold rights, so others restrain the excessive amercements which had an almost equally ruinous operation. The magnitude of his offence, by the fourteenth clause of Henry III's charter, must be the measure of his fine; and in every case the contenement (a word expressive of chattels necessary to each man's station, as the arms of a gentleman, the merchandise of a trader, the plough and wagons of a peasant) was exempted from seizure. A provision was made in the charter of John that no aid or escuage should be imposed, except in the three feudal cases of aid, without consent of Parliament. And this was extended to aids paid by the city of London. But the clause was omitted in the three charters granted by Henry III, though Parliament seem to have acted upon it in most part of his reign. It had, however, no reference to tallages imposed upon towns without their consent. Fourscore years were yet to elapse before the great principle of parliamentary taxation was explicitly and absolutely recognised.

A law which enacts that justice shall neither be sold, denied, nor delayed, stamps with infamy that government under which it had become necessary. But from the time of the charter, according to Madox, the disgraceful perversions of right, which

doubt whether these were in contemplation of the framers of Magna Charta. In an entry of the charter of 1217 by a contemporary hand, preserved in a book in the town-clerk's office in London, called "Liber Custumarum et Regum antiquorum," a various reading, et per legem terræ, occurs. (Blackstone's Charters, p. 42.) And the word vel is so frequently used for et that I am not wholly free from a suspicion that it was so intended in this place. The meaning will be that no person shall be disseized, etc., except upon a lawful cause of action or indictment found by the verdict of a jury. This really seems as good as any of the disjunctive interpretations, but I do not offer it with much confidence.

But perhaps the best sense of the disjunctive will be perceived by remembering that judicium pariun was generally opposed to the combat or the ordeal, which were equally lex terræ.

are upon record in the rolls of the exchequer, became less frequent.[154]

From this era a new soul was infused into the people of England. Her liberties, at the best long in abeyance, became a tangible possession, and those indefinite aspirations for the laws of Edward the Confessor were changed into a steady regard for the Great Charter. Pass but from the history of Roger de Hoveden to that of Matthew Paris, from the second Henry to the third, and judge whether the victorious struggle had not excited an energy of public spirit to which the nation was before a stranger. The strong man, in the sublime language of Milton, was aroused from sleep, and shook his invincible locks. Tyranny, indeed, and injustice will, by all historians not absolutely servile, be noted with moral reprobation; but never shall we find in the English writers of the twelfth century that assertion of positive and national rights which distinguishes those of the next age, and particularly the monk of St. Alban's. From his prolix history we may collect three material propositions as to the state of the English constitution during the long reign of Henry III; a prince to whom the epithet of worthless seems best applicable, and who, without committing any flagrant crimes, was at once insincere, ill-judging, and pusillanimous. The intervention of such a reign was a very fortunate circumstance for public liberty, which might possibly have been crushed in its infancy if an Edward had immediately succeeded to the throne of John.

1. The Great Charter was always considered as a fundamental law. But yet it was supposed to acquire additional security by frequent confirmation. This it received, with some not inconsiderable variation, in the first, second, and ninth years of Henry's reign. The last of these is in our present statute-book, and has never received any alterations; but Sir E. Coke reckons thirty-two instances wherein it has been solemnly ratified. Several of these were during the reign of Henry III, and were invariably purchased by the grant of a subsidy.[155] This prudent accommodation of Parliament to the circumstances of their age not only made the law itself appear more inviolable, but established that correspondence between supply and redress which for some centuries was the balance spring of our constitution. The charter, indeed, was often grossly violated by their administration. Even Hubert de Burgh, of whom history speaks more favourably than of Henry's later favourites, though a faithful servant of the crown, seems, as is too often the case with such men, to have thought the king's honour and interest concerned in maintaining an unlimited prerogative.[156] The government was, however, much worse administered after his fall. From the great difficulty of

[154] "Hist. of Exchequer," c. 12. [155] Matt. Paris, p. 272. [156] Id., p. 284.

compelling the king to observe the boundaries of law, the English clergy, to whom we are much indebted for their zeal in behalf of liberty during this reign, devised means of binding his consience and terrifying his imagination by religious sanctions. The solemn excommunication, accompanied with the most awful threats, pronounced against the violators of Magna Charta, is well known from our common histories. The king was a party to this ceremony, and swore to observe the charter. But Henry III, though a very devout person, had his own notions as to the validity of an oath that affected his power, and indeed passed his life in a series of perjuries. According to the creed of that age, a papal dispensation might annul any prior engagement; and he was generally on sufficiently good terms with Rome to obtain such an indulgence.

2. Though the prohibition of levying aids or escuages without consent of Parliament had been omitted in all Henry's charters, yet neither one nor the other seem, in fact, to have been exacted at discretion throughout his reign. On the contrary, the barons frequently refused the aids, or rather subsidies, which his prodigality was always demanding. Indeed, it would probably have been impossible for the king, however frugal, stripped as he was of so many lucrative though oppressive prerogatives by the Great Charter, to support the expenditure of government from his own resources. Tallages on his demesnes, and especially on the rich and ill-affected city of London, he imposed without scruple; but it does not appear that he ever pretended to a right of general taxation. We may, therefore, take it for granted that the clause in John's charter, though not expressly renewed, was still considered as of binding force. The king was often put to great inconvenience by the refusal of supply; and at one time was reduced to sell his plate and jewels, which the citizens of London buying, he was provoked to exclaim with envious spite against their riches, which he had not been able to exhaust.[157]

3. The power of granting money must, of course, imply the power of withholding it; yet this has sometimes been little more than a nominal privilege. But in this reign the English Parliament exercised their right of refusal, or, what was much better, of conditional assent. Great discontent was expressed at the demand of a subsidy in 1237; and the king alleging that he had expended a great deal of money on his sister's marriage with the emperor, and also upon his own, the barons answered that he had not taken their advice in those affairs, nor ought they to share the punishment of acts of imprudence they had not committed.[158]

[157] M. Paris, p. 650.

[158] Quod hæc omnia sine consilio fidelium suorum facerat, nec debuerant esse pœnæ participes, qui fuerant a culpâ immunes (p. 367).

In 1241, a subsidy having been demanded for the war in Poitou, the barons drew up a remonstrance, enumerating all the grants they had made on former occasions, but always on condition that the imposition should not be turned into precedent. Their last subsidy, it appears, had been paid into the hands of four barons, who were to expend it at their discretion for the benefit of the king and kingdom;[159] an early instance of parliamentary control over public expenditure. On a similar demand in 1244 the king was answered by complaints against the violation of the charter, the waste of former subsidies, and the maladministration of his servants.[160] Finally, the barons positively refused any money; and he extorted fifteen hundred marks from the city of London. Some years afterward they declared their readiness to burden themselves more than ever if they could secure the observance of the charter; and requested that the justiciary, chancellor, and treasurer might be appointed with consent of Parliament, according, as they asserted, to ancient custom, and might hold their offices during good behaviour.[161]

Forty years of mutual dissatisfaction had elapsed when a signal act of Henry's improvidence brought on a crisis which endangered his throne. Innocent IV, out of mere animosity against the family of Frederick II, left no means untried to raise up a competitor for the crown of Naples, which Manfred had occupied. Richard, Earl of Cornwall, having been prudent enough to decline this speculation, the Pope offered to support Henry's second son, Prince Edmund. Tempted by such a prospect, the silly king involved himself in irretrievable embarrassments by prosecuting an enterprise which could not possibly be advantageous to England, and upon which he entered without the advice of his Parliament. Destitute himself of money, he was compelled to throw the expense of this new crusade upon the Pope; but the assistance of Rome was never gratuitous, and Henry actually pledged his kingdom for the money which she might expend in a war for her advantage and his own.[162] He

[159] M. Paris, p. 515.

[160] Id., pp. 563, 572. Matthew Paris's language is particularly uncourtly: rex cum instantissimè, ne dicam impudentissimè, auxilium pecuniare ab iis iterum postularet, toties læsi et illusi, contradixerunt ei unanimiter et uno ore in facie.

[161] De communi consilio regni, sicut ab antiquo consuetum et justum (p. 778). This was not so great an encroachment as it may appear. Ralph de Neville, Bishop of Chichester, had been made chancellor in 1223, assensu totius regni; itaque scilicet ut non deponeretur ab ejus sigilli custodi nisi totius regni ordinante consensu et consilio (p. 266). Accordingly, the king demanding the great seal from him in 1236, he refused to give it up, alleging that, having received it in the general council of the kingdom, he could not resign it without the same authority (p. 363). And the Parliament of 1248 complained that the king had not followed the steps of his predecessors in appointing these three great officers by their consent (p. 646). What had been, in fact, the practice of former kings I do not know, but it is not likely to have been such as they represent. Henry, however, had named the Archbishop of York to the regency of the kingdom during his absence beyond seas in 1242, de consilio omnium comitum et baronum nostrorum et omnium fidelium nostrorum. (Rymer, tome i, p. 400.)

[162] Id., p. 771.

did not even want the effrontery to tell Parliament in 1257, introducing his son Edmund as King of Sicily, that they were bound for the repayment of fourteen thousand marks with interest. The Pope had also, in furtherance of the Neapolitan project, conferred upon Henry the tithes of all benefices in England, as well as the first fruits of such as should be vacant.[163] Such a concession drew upon the king the implacable resentment of his clergy, already complaining of the cowardice or connivance that had during all his reign exposed them to the shameless exactions of Rome. Henry had now indeed cause to regret his precipitancy. Alexander IV, the reigning pontiff, threatened him not only with a revocation of the grant to his son, but with an excommunication and general interdict, if the money advanced on his account should not be immediately repaid,[164] and a Roman agent explained the demand to a Parliament assembled in London. The sum required was so enormous, we are told, that it struck all the hearers with astonishment and horror. The nobility of the realm were indignant to think that one man's supine folly should thus bring them to ruin.[165] Who can deny that measures beyond the ordinary course of the constitution were necessary to control so prodigal and injudicious a sovereign? Accordingly, the barons insisted that twenty-four persons should be nominated, half by the king and half by themselves, to reform the state of the kingdom. These were appointed on the meeting of the Parliament at Oxford, after a prorogation.

The seven years that followed are a revolutionary period, the events of which we do not find satisfactorily explained by the historians of the time.[166] A king divested of prerogatives by his people soon appears even to themselves an injured party. And, as the baronial oligarchy acted with that arbitrary temper which is never pardoned in a government that has an air of usurpation about it, the royalists began to gain ground, chiefly through the defection of some who had joined in the original limitations imposed on the crown, usually called the provisions of Oxford. An ambitious man, confident in his talents and popularity, ventured to display too marked a superiority above his fellows in the same cause. But neither his character nor the battles of Lewes and Evesham fall strictly within the limits of a constitutional history. It is, however, important to observe

[163] Rymer, p. 813.

[164] Rymer, tome i, p. 632. This inauspicious negotiation for Sicily, which is not altogether unlike that of James I about the Spanish match in its folly, bad success, and the dissatisfaction it occasioned at home, receives a good deal of illustration from documents in Rymer's collection.

[165] Quantitas pecuniæ ad tantam ascendit summam, ut stuporem simul et horrorem in auribus generaret audientium. Doluit igitur nobilitas regni, se unius hominis ita confundi supinâ simplicitate. (M. Paris, p. 827.)

[166] The best account of the provisions of Oxford in 1260 and the circumstances connected with them is found in the "Burton Annals." (2 Gale, XV Scriptores, p. 407.) Many of these provisions were afterward enacted in the statute of Marlebridge.

that, even in the moment of success, Henry III did not presume to revoke any part of the Great Charter. His victory had been achieved by the arms of the English nobility, who had, generally speaking, concurred in the former measures against his government, and whose opposition to the Earl of Leicester's usurpation was compatible with a steady attachment to constitutional liberty.[167]

The opinions of eminent lawyers are undoubtedly, where legislative or judicial authorities fail, the best evidence that can be adduced in constitutional history. It will therefore be satisfactory to select a few passages from Bracton, himself a judge at the end of Henry III's reign, by which the limitations of prerogative by law will clearly appear to have been fully established. "The king," says he, "must not be subject to any man, but to God and the law; for the law makes him king. Let the king, therefore, give to the law what the law gives to him, dominion and power; for there is no king where will, and not law, bears rule."[168] "The king" (in another place) "can do nothing on earth, being the minister of God, but what he can do by law; nor is what is said" (in the Pandects) "any objection, that whatever the prince pleases shall be law; because by the words that follow in that text it appears to design not any mere will of the prince, but that which is established by the advice of his councillors, the king giving his authority, and deliberation being had upon it."[169] This passage is undoubtedly a misrepresentation of the famous lex regia, which has ever been interpreted to convey the unlimited power of the people to their emperors.[170] But the very circumstance of so perverted a gloss put upon this text is a proof that no other doctrine could be admitted in the law of England. In another passage Bracton reckons as superior to the king, "not only God and the law, by which he is made king, but his court of earls and barons; for the former (comites) are so styled as associates of the king, and whoever has an associate has a master;[171] so that, if the king were without a bridle—that is, the law—they ought to put a bridle upon him."[172] Several other passages in Bracton might be produced to the same import; but these are sufficient to demonstrate the important fact that, however extensive or even indefinite might be the royal prerogative in the days of Henry III, the law was already its superior, itself but made part of the law, and was

[167] The Earl of Gloucester, whose personal quarrel with Montfort had overthrown the baronial oligarchy, wrote to the king in 1267, ut provisiones Oxoniæ teneri faciat per regnum suum, et ut promissa sibi apud Evesham de facto compleret. (Matt. Paris, p. 850.)

[168] L. i, c. 8.

[169] L. iii, c. 9. These words are nearly copied from Glanvil's introduction to his treatise.

[170] See Selden ad Fletam, p. 1046.

[171] This means, I suppose, that he who acts with the consent of others must be in some degree restrained by them; but it is ill expressed.

[172] L. ii, c. 16.

incompetent to overthrow it.[173] It is true that in this very reign the practice of dispensing with statutes by a non-obstante was introduced, in imitation of the papal dispensation.[174] But this prerogative could only be exerted within certain limits, and, however pernicious it may be justly thought, was, when thus understood and defined, not, strictly speaking, incompatible with the legislative sovereignty of Parliament.

In conformity with the system of France and other feudal countries, there was one standing council, which assisted the Kings of England in the collection and management of their revenue, the administration of justice to suitors, and the despatch of all public business. This was styled the king's court, and held in his palace, or wherever he was personally present. It was composed of the great officers: the chief justiciary,[175] the chancellor, the constable, marshal, chamberlain, steward, and treasurer, with any others whom the king might appoint. Of this great court there was, as it seems, from the beginning, a particular branch, in which all matters relating to the revenue were exclusively transacted. This, though composed of the same persons, yet, being held in a different part of the palace, and for different business, was distinguished from the king's court by the name of the exchequer; a separation which became complete when civil pleas were decided and judgments recorded in this second court.[176]

[173] Allen has pointed out that the king might have been sued in his own courts, like one of his subjects, until the reign of Edward I, who introduced the method of suing by petition of right; and in the "Year Book of Edward III" one of the judges says that he has seen a writ beginning, Præcipe Henry regi Angliæ. Bracton, however, expressly asserts the contrary, as Mr. Allen owns, so that we may reckon this rather doubtful. Bracton has some remarkable words which I have omitted to quote: after he has broadly asserted that the king has no superior but God, and that no remedy can be had by law against him, he proceeds: Nisi sit qui dicat, quod universitas regni et baronagium suum hoc facere debeant et possint in curia ipsius regis. By curia we must here understand Parliament, and not the law courts.

[174] M. Paris, p. 701.

[175] The chief justiciary was the greatest subject in England. Besides presiding in the king's court and in the exchequer, he was originally, by virtue of his office, the regent of the kingdom during the absence of the sovereign, which, till the loss of Normandy, occurred very frequently. Writs, at such times, ran in his name, and were tested by him. (Madox, "Hist. of Exchequer," p. 16.) His appointment upon these temporary occasions was expressed, ad custodiendum loco nostro terram nostram Angliæ et pacem regni nostri; and all persons were enjoined to obey him tanquam justitiario nostro. (Rymer, tome i, p. 181.) Sometimes, however, the king issued his own writ de ultra mare. The first time when the dignity of this office was impaired was at the death of John, when the justiciary, Hubert de Burgh, being besieged in Dover Castle, those who proclaimed Henry III at Gloucester constituted the Earl of Pembroke governor of the king and kingdom, Hubert still retaining his office. This is erroneously stated by Matthew Paris, who has misled Spelman in his "Glossary"; but the truth appears from Hubert's answer to the articles of charge against him, and from a record in Madox's "Hist. of Exch.," c. 21, note A, wherein the Earl of Pembroke is named rector regis et regni, and Hubert de Burgh justiciary. In 1241 the Archbishop of York was appointed to the regency during Henry's absence in Poitou, without the title of justiciary. (Rymer, tome i, p. 410.) Still the office was so considerable that the barons who met in the Oxford Parliament of 1258 insisted that the justiciary should be annually chosen with their approbation. But the subsequent successes of Henry prevented this being established, and Edward I discontinued the office altogether.

[176] For much information about the

It is probable that in the age next after the conquest few causes in which the crown had no interest were carried before the royal tribunals, every man finding a readier course of justice in the manor or county to which he belonged.[177] But by degrees this supreme jurisdiction became more familiar; and, as it seemed less liable to partiality or intimidation than the provincial courts, suitors grew willing to submit to its expensiveness and inconvenience. It was obviously the interest of the king's court to give such equity and steadiness to its decisions as might encourage this disposition. Nothing could be more advantageous to the king's authority, nor, what perhaps was more immediately regarded, to his revenue, since a fine was always paid for leave to plead in his court, or to remove thither a cause commenced below. But because few, comparatively speaking, could have recourse to so distant a tribunal as that of the king's court, and perhaps also on account of the attachment which the English felt to their ancient right of trial by the neighbouring freeholders, Henry II established itinerant justices to decide civil and criminal pleas within each county.[178] This excellent institution is referred by some to the twenty-second year of that prince, but Madox traces it several years higher.[179] We have owed to it the uniformity of our common law, which would otherwise have been split, like that of France, into a multitude of local customs; and we still owe to it the assurance, which is felt by the poorest and most remote inhabitant of England, that his right is weighed by the same incorrupt and acute understanding upon which the decision of the highest questions is reposed. The justices of assize seem originally to have gone their circuits annually; and as part of their duty was to set tallages upon royal towns, and superintend the collection of the revenue, we may be certain that there could be no long interval. This annual visitation was expressly confirmed by the twelfth section of Magna Charta, which provides also that no assize of novel disseizin, or mort d'ancestor, should be taken except in the shire where the lands in controversy lay. Hence this clause stood opposed, on the one hand, to the encroachments of the king's court, which might otherwise, by drawing pleas of land to itself, have defeated the

Curia Regis, and especially this branch of it, the student of our constitutional history should have recourse to Madox's "History of the Exchequer," and to the "Dialogus de Scaccario," written in the time of Henry II by Richard, Bishop of Ely, though commonly ascribed to Gervase of Tilbury. This treatise he will find subjoined to Madox's work. [Note XIII.]

[177] Omnis causa terminetur comitatu, vel hundredo, vel halimoto socam habentium. ("Leges Henr. I," c. 9.)

[178] "Dialogus de Scaccario," p. 38.

[179] "Hist. of Exchequer," c. iii. Lord Littleton thinks that this institution may have been adopted in imitation of Louis VI, who half a century before had introduced a similar regulation in his domains. ("Hist. of Henry II," vol. ii, p. 206.) Justices in eyre, or, as we now call them, of assize, were sometimes commissioned in the reign of Henry I. (Hardy's Introduction to "Close Rolls.") They do not appear to have gone their circuits regularly before 22 Henry II (1176).

suitor's right to a jury from the vicinage; and on the other, to those of the feudal aristocracy, who hated any interference of the crown to chastise their violations of law, or control their own jurisdiction. Accordingly, while the confederacy of barons against Henry III was in its full power, an attempt was made to prevent the regular circuits of the judges.[180]

Long after the separation of the exchequer from the king's court, another branch was detached for the decision of private suits. This had its beginning, in Madox's opinion, as early as the reign of Richard I.[181] But it was completely established by Magna Charta. "Common Pleas," it is said in the fourteenth clause, "shall not follow our court, but be held in some certain place." Thus was formed the Court of Common Bench at Westminster, with full, and, strictly speaking, exclusive jurisdiction over all civil disputes, where neither the king's interest, nor any matter savouring of a criminal nature, was concerned. For of such disputes neither the court of king's bench, nor that of exchequer, can take cognizance, except by means of a legal fiction, which, in the one case, supposes an act of force, and, in the other, a debt to the crown.

The principal officers of state, who had originally been effective members of the king's court, began to withdraw from it, after this separation into three courts of justice, and left their places to regular lawyers, though the treasurer and chancellor of the exchequer have still seats on the equity side of that court, a vestige of its ancient constitution. It would, indeed, have been difficult for men bred in camps or palaces to fulfil the ordinary functions of judicature under such a system of law as had grown up in England. The rules of legal decision, among a rude people, are always very simple, not serving much to guide, far less to control, the feelings of natural equity. Such were those which prevailed among the Anglo-Saxons, requiring no subtler intellect, or deeper learning, than the earl or sheriff at the head of his county court might be expected to possess. But a great change was wrought in about a century after the conquest. Our English lawyers, prone to magnify the antiquity, like the other merits of their system, are apt to carry up the date of the common law, till, like the pedigree of an illustrious family, it loses itself in the obscurity of ancient time. Even Sir Matthew Hale

[180] Justiciarii regis Angliæ, qui dicuntur itineris, missi Herfordiam pro suo exequendo officio repelluntur, allegantibus his qui regi adversabantur, ipsos contrà formam provisionum Oxoniæ nuper factarum venisse. ("Chron. Nic. Trivet.," A. D. 1260.) I forget where I found this quotation.

[181] "Hist. of Exchequer," c. 19. Justices of the bench are mentioned several years before Magna Charta. But Madox thinks the chief justiciary of England might preside in the two courts, as well as in the exchequer. After the erection of the Common Bench the style of the superior court began to alter. It ceased by degrees to be called the king's court. Pleas were said to be held coram rege, or coram rege ubicunque fuerit. And thus the court of king's bench was formed out of the remains of the ancient curia regis.

does not hesitate to say that its origin is as undiscoverable as that of the Nile. But though some features of the common law may be distinguishable in Saxon times, while our limited knowledge prevents us from assigning many of its peculiarities to any determinable period, yet the general character and most essential parts of the system were of much later growth. The laws of the Anglo-Saxon kings, Madox truly observes, are as different from those collected by Glanvil as the laws of two different nations. The pecuniary compositions for crimes, especially for homicide, which run through the Anglo-Saxon code down to the laws ascribed to Henry I,[182] are not mentioned by Glanvil. Death seems to have been the regular punishment of murder, as well as robbery. Though the investigation by means of ordeal was not disused in his time,[183] yet trial by combat, of which we find no instance before the conquest, was evidently preferred. Under the Saxon government, suits appear to have commenced, even before the king, by verbal or written complaint; at least, no trace remains of the original writ, the foundation of our civil procedure.[184] The descent of lands before the conquest was according to the custom of gavelkind, or equal partition among the children;[185] in the age of Henry I, the eldest son took the principal fief to his own share;[186] in that of Glanvil, he inherited all the lands held by knight service; but the descent of socage lands depended on the particular custom of the estate. By the Saxon laws, upon the death of the son without issue, the father inherited;[187] by our common law, he is absolutely and in every case excluded. Lands were, in general, devisable by testament before the conquest; but not in the time of Henry II, except by particular custom. These are sufficient samples of the differences between our Saxon and Norman jurisprudence; but the distinct character of the two will strike more forcibly every one who peruses successively the laws published by Wilkins and the treatise ascribed to Glanvil. The former resemble the barbaric codes of the Continent, and the capitularies of Charlemagne and his family, minute to an excess in apportioning punishments, but sparing and indefinite in treating of civil rights; while the other, copious, discriminating, and technical, displays the characteristics, as well as unfolds the principles, of English law. It is difficult to assert anything decisively as to the period between the conquest and the reign of Henry II, which presents fewer mate-

[182] C. 70.

[183] A citizen of London, suspected of murder, having failed in the ordeal of cold water, was hanged by order of Henry II, though he offered 500 marks to save his life. (Hoveden, p. 566.) It appears as if the ordeal were permitted to persons already convicted by the verdict of a jury. If they escaped in this purgation, yet, in cases of murder, they were banished the realm. (Wilkins, "Leges Anglo-Saxon," p. 330.) Ordeals were abolished about the beginning of Henry III's reign.

[184] Hickes, "Dissert. Epistol.," p. 8.

[185] "Leges Gulielmi," p. 225.

[186] "Leges Henry I," c. 70.

[187] Ibid.

rials for legal history than the preceding age; but the treatise denominated the "Laws of Henry I," compiled at the soonest about the end of Stephen's reign,[188] bears so much of a Saxon character that I should be inclined to ascribe our present common law to a date, so far as it is capable of any date, not much antecedent to the publication of Glanvil.[189] At the same time, since no kind of evidence attests any sudden and radical change in the jurisprudence of England, the question must be considered as left in great obscurity. Perhaps it might be reasonable to conjecture that the treatise called "Leges Henrici Primi" contains the ancient usages still prevailing in the inferior jurisdictions, and that of Glanvil the rules established by the Norman lawyers of the king's court, which would, of course, acquire a general recognition and efficacy, in consequence of the institution of justices holding their assizes periodically throughout the country.

The capacity of deciding legal controversies was now only to be found in men who had devoted themselves to that peculiar study; and a race of such men arose, whose eagerness and even enthusiasm in the profession of the law were stimulated by the self-complacency of intellectual dexterity in threading its intricate and thorny mazes. The Normans are noted in their own country for a shrewd and litigious temper, which may have given a character to our courts of justice in early times. Something too of that excessive subtlety, and that preference of technical to rational principles, which runs through our system, may be imputed to the scholastic philosophy, which was in vogue during the same period, and is marked by the same features. But we have just reason to boast of the leading causes of these defects; an adherence to fixed rules, and a jealousy of judicial discretion, which have in no country, I believe, been carried to such a length. Hence precedents of adjudged cases, becoming authorities for the future, have been constantly noted, and form, indeed, almost the sole ground of argument in questions of mere law. But these authorities being frequently unreasonable and inconsistent, partly from the infirmity of all human reason, partly from the imperfect manner in which a number of unwarranted and incorrect reporters have handed them down, later judges grew anxious to elude by impalpable distinctions what they did not venture to overturn. In some instances this evasive skill has been applied to acts of the legislature. Those who are moderately conversant with the history of our law will easily trace other circumstances that have co-operated in producing that technical and subtle system

[188] The "Decretum" of Gratian is quoted in this treatise, which was not published in Italy till 1151.

[189] Madox, "Hist. of Exch.," p. 122, edit. 1711. Lord Littleton, vol. ii, p. 267, has given reasons for supposing that Glanvil was not the author of this treatise, but some clerk under his direction.

which regulates the course of real property. For as that formed almost the whole of our ancient jurisprudence, it is there that we must seek its original character. But much of the same spirit pervades every part of the law. No tribunals of a civilized people ever borrowed so little, even of illustration, from the writings of philosophers, or from the institutions of other countries. Hence law has been studied, in general, rather as an art than a science, with more solicitude to know its rules and distinctions than to perceive their application to that for which all rules of law ought to have been established, the maintenance of public and private rights. Nor is there any reading more jejune and unprofitable to a philosophical mind than that of our ancient law-books. Later times have introduced other inconveniences, till the vast extent and multiplicity of our laws have become a practical evil of serious importance, and an evil which, between the timidity of the legislature, on the one hand, and the selfish views of practitioners on the other, is likely to reach, in no long period, an intolerable excess. Deterred by an interested clamour against innovation from abrogating what is useless, simplifying what is complex, or determining what is doubtful, and always more inclined to stave off an immediate difficulty by some patchwork scheme of modifications and suspensions than to consult for posterity in the comprehensive spirit of legal philosophy, we accumulate statute upon statute, and precedent upon precedent, till no industry can acquire, nor any intellect digest, the mass of learning that grows upon the panting student; and our jurisprudence seems not unlikely to be simplified in the worst and least honourable manner, a tacit agreement of ignorance among its professors. Much, indeed, has already gone into desuetude within the last century, and is known only as an occult science by a small number of adepts. We are thus gradually approaching the crisis of a necessary reformation, when our laws, like those of Rome, must be cast into the crucible. It would be a disgrace to the nineteenth century if England could not find her Tribonian.[190]

[190] Whitelocke, just after the Restoration, complains that "now the volume of our statutes is grown or swelled to a great bigness." The volume! What would he have said to the monstrous birth of a volume triennially, filled with laws professing to be the deliberate work of the legislature, which every subject is supposed to read, remember, and understand? The excellent sense of the following sentences from the same passage may well excuse me for quoting them, and, perhaps, in this age of bigoted averseness to innovation, I have need of some apology for what I have ventured to say in the text: "I remember the opinion of a wise and learned statesman and lawyer (the Chancellor Oxenstiern), that multiplicity of written laws do but distract the judges, and render the law less certain; that where the law sets due and clear bounds betwixt the prerogative royal and the rights of the people, and gives remedy in private causes, there needs no more laws to be increased; for thereby litigation will be increased likewise. It were a work worthy of a Parliament, and can not be done otherwise, to cause a review of all our statutes, to repeal such as they shall judge inconvenient to remain in force; to confirm those which they shall think fit to stand, and those several statutes which are confused, some repugnant to others, many touching the

This establishment of a legal system, which must be considered as complete at the end of Henry III's reign, when the unwritten usages of the common law as well as the forms and precedents of the courts were digested into the great work of Bracton, might, in some respects, conduce to the security of public freedom. For, however highly the prerogative might be strained, it was incorporated with the law, and treated with the same distinguished and argumentative subtlety as every other part of it. Whatever things, therefore, it was asserted that the king might do, it was a necessary implication that there were other things which he could not do, else it were vain to specify the former. It is not meant to press this too far, since undoubtedly the bias of lawyers toward the prerogative was sometimes too discernible. But the sweeping maxims of absolute power, which servile judges and churchmen taught the Tudor and Stuart princes, seem to have made no progress under the Plantagenet line.

Whatever may be thought of the effect which the study of the law had upon the rights of the subject, it conduced materially to the security of good order by ascertaining the hereditary succession of the crown. Five kings out of seven that followed William the Conqueror were usurpers, according at least to modern notions. Of these, Stephen alone encountered any serious opposition upon that ground; and with respect to him, it must be remembered that all the barons, himself included, had solemnly sworn to maintain the succession of Matilda. Henry II procured a parliamentary settlement of the crown upon his eldest and second sons; a strong presumption that their hereditary right was not absolutely secure.[191] A mixed notion of right and choice, in fact, prevailed as to the succession of every European monarchy. The coronation oath and the form of popular consent then required were considered as more material, at least to perfect a title, than we deem them at present. They gave seizin, as it were, of the crown, and, in cases of disputed pretensions, had a sort of judicial efficacy. The "Chronicle" of Dunstable says, concerning Richard I, that he was "elevated to the throne by hereditary right, after a solemn election by the clergy and people": [192] words that indicate the current principles of that age. It is to be observed, however, that Richard took upon him the exercise of royal prerogatives without waiting for his coronation.[193] The succession of John has certainly passed in modern times for a usurpation. I do not find that it was considered as

same matters, to be reduced into certainty, all of one subject into one statute, that perspicuity and clearness may appear in our written laws, which at this day few students or sages can find in them." (Whitelocke's "Commentary on Parliamentary Writ," vol. i, p. 409.)

[191] Littleton, vol. ii, p. 14.

[192] Littleton, volume ii, page 42. Hæreditario jure promovendus in regnum, post cleri et populi solennem electionem.

[193] "Gul. Neubrigensis," l. iv, c. 1.

such by his own contemporaries on this side of the Channel. The question of inheritance between an uncle and the son of his deceased elder brother was yet unsettled, as we learn from Glanvil, even in private succession.[194] In the case of sovereignties, which were sometimes contended to require different rules from ordinary patrimonies, it was, and continued long to be, the most uncertain point in public law. John's pretensions to the crown might, therefore, be such as the English were justified in admitting, especially as his reversionary title seems to have been acknowledged in the reign of his brother Richard.[195] If indeed we may place reliance on Matthew Paris, Archbishop Hubert, on this occasion, declared in the most explicit terms that the crown was elective, giving even to the blood royal no other preference than their merit might challenge.[196] Carte rejects this as a fiction of the historian; and it is certainly a strain far beyond the constitution, which, both before and after the conquest, had invariably limited the throne to one royal stock, though not strictly to its nearest branch. In a charter of the first year of his reign John calls himself king, "by hereditary right, and through the consent and favour of the Church and the people."[197]

It is deserving of remark that, during the rebellions against this prince and his son, Henry III, not a syllable was breathed in favour of Eleanor, Arthur's sister, who, if the present rules of succession had been established, was the undoubted heiress of his right. The barons chose rather to call in the aid of Louis, with scarcely a shade of title, though with much better means of maintaining himself. One should think that men whose fathers had been in the field for Matilda could make no difficulty about female succession. But I doubt whether, notwithstanding that precedent, the crown of England was universally acknowledged to be capable of descending to a female heir. Great averseness had been shown by the nobility of Henry I to his proposal of settling the kingdom on his daughter.[198] And from a remarkable passage which I shall produce in a note, it appears that even in the reign of Edward III the succession was supposed to be confined to the male line.[199]

[194] Glanvil, l. vii, c. 3.
[195] Hoveden, p. 702.
[196] P. 165.
[197] Jure hæreditario, et mediante tam cleri et populi consensu et favore. (Gurdon on "Parliaments," p. 139.)
[198] Littleton, vol. i, p. 162.
[199] This is intimated by the treaty made in 1339 for a marriage between the eldest son of Edward III and the Duke of Brabant's daughter. Edward therein promises that, if his son should die before him, leaving male issue, he will procure the consent of his barons, nobles, and cities (that is, of Parliament; nobles here meaning knights, if the word has any distinct sense), for such issue to inherit the kingdom; and if he die leaving a daughter only, Edward or his heir shall make such provision for her as belongs to the daughter of a king. (Rymer, tome v, p. 114.) It may be inferred from this instrument that, in Edward's intention, if not by the constitution, the Salic law was to regulate the succession of the English crown. This law, it must be remembered, he was compelled to admit in his claim on the kingdom of France, though with a certain modification which gave a pretext of title to himself.

At length, about the middle of the thirteenth century, the lawyers applied to the crown the same strict principles of descent which regulate a private inheritance. Edward I was proclaimed immediately upon his father's death, though absent in Sicily. Something, however, of the old principle may be traced in this proclamation, issued in his name by the guardians of the realm, where he asserts the crown of England "to have devolved upon him by hereditary succession and the will of his nobles."[200] These last words were omitted in the proclamation of Edward II,[201] since whose time the crown has been absolutely hereditary. The coronation oath, and the recognition of the people at that solemnity, are formalities which convey no right either to the sovereign or the people, though they may testify the duties of each.[202]

I can not conclude the present section without observing one most prominent and characteristic distinction between the constitution of England and that of every other country in Europe; I mean its refusal of civil privileges to the lower nobility, or those whom we denominate the gentry. In France, in Spain, in Germany, wherever, in short, we look, the appellations of nobleman and gentleman have been strictly synonymous. Those entitled to bear them by descent, by tenure of land, by office or royal creation, have formed a class distinguished by privileges inherent in their blood from ordinary freemen. Marriage with noble families, or the purchase of military fiefs, or the participation of many civil offices, were, more or less, interdicted to the commons of France and the empire. Of these restrictions nothing, or next to nothing, was ever known in England. The law has never taken notice of gentlemen.[203] From the reign of Henry III, at least, the legal equality of all ranks below the peerage was, to every essential purpose, as complete as at present. Compare

[200] Ad nos regni gubernaculum successione hæreditariâ, ac procerum regni voluntate, et fidelitate nobis præstitâ sit devolutum. Brady ("History of England," vol. ii, appendix, p. 1) expounds procerum voluntate to mean willingness, not will; as much as to say, they acted readily and without command. But in all probability it was intended to save the usual form of consent.

[201] Rymer, tome iii, p. 1. Walsingham, however, asserts that Edward II ascended the throne non tam jure hæreditario quàm unanimi assensu procerum et magnatum (p. 95). Perhaps we should omit the word non, and he might intend to say that the king had not only his hereditary title, but the free consent of his barons.

[202] [Note XIV.]

[203] It is hardly worth while, even for the sake of obviating cavils, to notice as an exception the statute of 23 H. VI, c. 14, prohibiting the election of any who were not born gentlemen for knights of the shire. Much less should I have thought of noticing, if it had not been suggested as an objection, the provision of the statute of Merton, that guardians in chivalry shall not marry their wards to villeins or burgesses, to their disparagement. Wherever the distinctions of rank and property are felt in the customs of society, such marriages will be deemed unequal; and it was to obviate the tyranny of feudal superiors who compelled their wards to accept a mean alliance, or to forfeit its price, that this provision of the statute was made. But this does not affect the proposition I had maintained as to the legal equality of commoners, any more than a report of a master in chancery at the present day, that a proposed marriage for a ward of the court was unequal to what her station in society appeared to claim, would invalidate the same proposition.

two writers nearly contemporary, Bracton with Beaumanoir, and mark how the customs of England are distinguishable in this respect. The Frenchman ranges the people under three divisions, the noble, the free, and the servile; our countryman has no generic class, but freedom and villenage.[204] No restraint seems ever to have lain upon marriage; nor have the children even of a peer been ever deemed to lose any privilege by his union with a commoner. The purchase of lands held by knight-service was always open to all freemen. A few privileges, indeed, were confined to those who had received knighthood.[205] But, upon the whole, there was a virtual equality of rights among all the commoners of England. What is most particular is, that the peerage itself imparts no privilege except to its actual possessor. In every other country the descendants of nobles can not but themselves be noble, because their nobility is the immediate consequence of their birth. But though we commonly say that the blood of a peer is ennobled, yet this expression seems hardly accurate, and fitter for heralds than lawyers; since in truth nothing confers nobility but the actual descent of a peerage. The sons of peers, as we well know, are commoners, and totally destitute of any legal right beyond a barren precedence.

There is no part, perhaps, of our constitution so admirable as this equality of civil rights; this isonomia, which the philosophers of ancent Greece only hoped to find in democratical government.[206] From the beginning our law has been no respecter of persons. It screens not the gentleman of ancient lineage from the judgment of an ordinary jury, nor from ignominious punishment. It confers not, it never did confer, those unjust immunities from public burdens which the superior orders arrogated to themselves upon the Continent. Thus, while the privileges of our peers, as hereditary legislators of a free people, are incomparably more valuable and dignified in their nature, they are far less invidious in their exercise than those of any other nobility in Europe. It is, I am firmly persuaded, to this peculiarly democratical character of the English monarchy that we are indebted for its long permanence, its regular improvement, and its present vigour. It is a singular, a providential circumstance, that, in an age when the gradual march of civilization and commerce was so little foreseen, our ancestors, deviating from the usages of neighbouring countries, should, as if deliberately, have guarded against that expansive force which, in bursting through

[204] Beaumanoir, c. 45; Bracton, l. i, c. 6.

[205] See for these Selden's "Titles of Honour," vol. iii, p. 806.

[206] Πλῆθος ἄρχον πρῶτον μὲν ὄνυμα κάλλιστον ἔχει ἰσονομίαν, says the advocate of democracy, in the discussion of forms of government which Herodotus ("Thalia," c. 80) has put into the mouths of three Persian satraps, after the murder of Smerdis; a scene conceived in the spirit of Corneille.

obstacles improvidently opposed, has scattered havoc over Europe.

This tendency to civil equality in the English law may, I think, be ascribed to several concurrent causes. In the first place, the feudal institutions were far less military in England than upon the Continent. From the time of Henry II the escuage, or pecuniary commutation for personal service, became almost universal. The armies of our kings were composed of hired troops, a great part of whom certainly were knights and gentlemen, but who, serving for pay, and not by virtue of their birth or tenure, preserved nothing of the feudal character. It was not, however, so much for the ends of national as of private warfare that the relation of lord and vassal was contrived. The right which every baron in France possessed of redressing his own wrongs and those of his tenants by arms rendered their connection strictly military. But we read very little of private wars in England. Notwithstanding some passages in Glanvil, which certainly appear to admit their legality, it is not easy to reconcile this with the general tenor of our laws.[207] They must always have been a breach of the king's peace, which our Saxon lawgivers were perpetually striving to preserve, and which the Conqueror and his sons more effectually maintained.[208] Nor can we trace many instances (some we perhaps may) of actual hostilities among the nobility of England after the conquest, except during such an anarchy as the reign of Stephen or the minority of Henry III. Acts of outrage and spoliation were indeed very frequent. The statute of Marlebridge, soon after the baronial wars of Henry III, speaks of the disseizins that had taken place during the late disturbances;[209] and thirty-five verdicts are said to have been given at one court of assize against Foulkes de Breauté, a notorious partisan, who commanded some foreign mercenaries at the beginning of the same reign;[210] but these are faint resemblances of that widespreading devastation which the nobles of France and Germany were entitled to carry among their neighbours. The most prominent instance perhaps of what may be deemed a private war arose out of a contention between the

[207] I have modified this passage in consequence of the just animadversion of a periodical critic. In the first edition I had stated too strongly the difference which I still believe to have existed between the customs of England and other feudal countries in respect of private warfare. [Note XV.]

[208] The penalties imposed on breaches of the peace, in Wilkins's "Anglo-Saxon Laws," are too numerous to be particularly inserted. One remarkable passage in "Doomsday" appears, by mentioning a legal custom of private feuds in an individual manor, and there only among Welshmen, to afford an inference that it was an anomaly. In the royal manor of Archenfeld in Herefordshire, if one Welshman kills another, it was a custom for the relations of the slain to assemble and plunder the murderer and his kindred, and burn their houses, until the corpse should be interred, which was to take place by noon on the morrow of his death. Of this plunder the king had a third part, and the rest they kept for themselves (p. 179).

[209] Stat. 52 H. III.

[210] Matt. Paris, p. 271.

Earls of Gloucester and Hereford, in the reign of Edward I, during which acts of extraordinary violence were perpetrated; but, far from its having passed for lawful, these powerful nobles were both committed to prison, and paid heavy fines.[211] Thus the tenure of knight-service was not in effect much more peculiarly connected with the profession of arms than that of socage. There was nothing in the former condition to generate that high self-estimation which military habits inspire. On the contrary, the burdensome incidents of tenure in chivalry rendered socage the more advantageous, though less honourable of the two.

In the next place, we must ascribe a good deal of efficacy to the old Saxon principles that survived the conquest of William and infused themselves into our common law. A respectable class of free socagers, having, in general, full rights of alienating their lands, and holding them probably at a small certain rent from the lord of the manor, frequently occur in "Doomsday Book." Though, as I have already observed, these were derived from the superior and more fortunate Anglo-Saxon ceorls, they were perfectly exempt from all marks of villenage both as to their persons and estates. Most have derived their name from the Saxon soc, which signifies a franchise, especially one of jurisdiction,[212] and they undoubtedly were suitors to the court baron of the lord, to whose soc, or right of justice, they belonged. They were consequently judges in civil causes, determined before the manorial tribunal.[213] Such privileges set them greatly above the

[211] "Rot. Parl.," vol. i, p. 70.

[212] It now appears strange to me that I could ever have given the preference to Bracton's derivation of socage from soc de charue. The word sokeman, which occurs so often in "Doomsday," is continually coupled with soca, a franchise or right of jurisdiction belonging to the lord, whose tenant or rather suitor, the sokeman is described to be. Soc is an idle and improbable etymology; especially as at the time when sokeman was most in use there was hardly a word of a French root in the language. Soc is plainly derived from seco, and therefore can not pass for a Teutonic word.

I once thought the etymology of Bracton and Littleton curiously illustrated by a passage in Blomefield's "Hist. of Norfolk," vol. iii, p. 538 (folio). In the manor of Cawston a man with a brazen hand holding a ploughshare was carried before the steward as a sign that it was held by socage of the duchy of Lancaster.

[213] The feudal courts, if under that name we include those of landholders having grants of soc, sac, infangthef, etc., from the crown, had originally a jurisdiction exclusive of the county and hundred. The "Laws of Henry I," a treatise of great authority as a contemporary exposition of the law of England in the middle of the twelfth century, just before the great though silent revolution which brought in the Norman jurisprudence, bear abundant witness to the territorial courts, collateral to and independent of those of the sheriff. Other proofs are easily furnished for a later period. (Vide "Chron. Jocelyn de Brakelonde, et alia.)

It is nevertheless true that territorial jurisdiction was never so extensive as in governments of a more aristocratical character, either in criminal or civil cases. 1. In the laws ascribed to Henry I it is said that all great offences could only be tried in the king's court, or by his commission (c. 10). Glanvil distinguishes the criminal pleas, which could only be determined before the king's judges, from those which belong to the sheriff. Treason, murder, robbery, and rape were of the former class; theft of the latter (l. xiv). The criminal jurisdiction of the sheriff is entirely taken away by Magna Charta (c. 17). Sir E. Coke says the territorial franchises of infangthef and outfangthef "had some continuance afterward, but either by this act, or per desuetudinem, for inconvenience, these franchises within manors are antiquated and gone." ("2 Inst.," p. 31.) The statute hardly seems to reach them; and they were certainly both claimed and

roturiers or censiers of France. They were all Englishmen, and their tenure strictly English; which seems to have given it credit in the eyes of our lawyers, when the name of Englishman was affected even by those of Norman descent, and the laws of Edward the Confessor became the universal demand. Certainly Glanvil, and still more Bracton, treat the tenure in free socage with great respect. And we have reason to think that this class of freeholders was very numerous even before the reign of Edward I.

But, lastly, the change which took place in the constitution of Parliament consummated the degradation, if we must use the word, of the lower nobility: I mean, not so much their attendance by representation instead of personal summons, as their election by the whole body of freeholders, and their separation, along with citizens and burgesses, from the House of Peers. These changes will fall under consideration in the following section.

THE ENGLISH CONSTITUTION

Though the undisputed accession of a prince like Edward I to the throne of his father does not seem so convenient a resting place in history as one of those revolutions which interrupt the natural chain of events, yet the changes wrought during his reign make it properly an epoch in the progress of these inquiries. And, indeed, as ours is emphatically styled a government by

exercised as late as the reign of Edward I. Blomefield mentions two instances, both in 1285, where executions for felony took place by the sentence of a court-baron. In these cases the lord's privilege was called in question at the assizes, by which means we learn the transaction; it is very probable that similar executions occurred in manors where the jurisdiction was not disputed. ("Hist. of Norfolk," vol. i, p. 313; vol. iii, p. 50.) Felonies are now cognizable in the greater part of boroughs; though it is usual, except in the most considerable places, to remit such as are not within benefit of clergy to the justices of jail delivery on their circuit. This jurisdiction, however, is given, or presumed to be given, by special charter, and perfectly distinct from that which was feudal and territorial. Of the latter, some vestiges appear to remain in particular liberties, as, for example, the Soke of Peterborough; but most, if not all, of these local franchises have fallen, by right or custom, into the hands of justices of the peace. A territorial privilege somewhat analogous to criminal jurisdiction, but considerably more oppressive, was that of private jails. At the Parliament of Merton, 1237, the lords requested to have their own prison for trespasses upon their parks and ponds, which the king refused. (Stat. Merton, c. 11.) But several lords enjoyed this as a particular franchise; which is saved by the statute 5 H. IV, c. 10, directing justices of the peace to imprison no man except in the common jail. 2. The civil jurisdiction of the court-baron was rendered insignificant, not only by its limitation in personal suits to debts or damages not exceeding forty shillings, but by the writs of tolt and pone, which at once removed a suit for lands, in any state of its progress before judgment, into the county court or that of the king. The statute of Marlebridge took away all appellant jurisdiction of the superior lord, for false judgment in the manorial court of his tenant, and thus aimed another blow at the feudal conection (52 H. III, c. 19.) 3. The lords of the counties palatine of Chester and Durham, and the royal franchise of Ely, had not only a capital jurisdiction in criminal cases, but an exclusive cognizance of civil suits; the former still is retained by the Bishops of Durham and Ely, though much shorn of its ancient extent by an act of Henry VIII (27 H. VIII, c. 24), and administered by the king's justices of assize; the bishops or their deputies being put only on the footing of ordinary justices of the peace. (Id., s. 20.)

king, lords, and commons, we can not, perhaps, in strictness carry it further back than the admission of the latter into Parliament; so that if the constant representation of the commons is to be referred to the age of Edward I, it will be nearer the truth to date the English constitution from that than from any earlier era.

The various statutes affecting the law of property and administration of justice which have caused Edward I to be named, rather hyperbolically, the English Justinian, bear no immediate relation to our present inquiries. In a constitutional point of view the principal object is that statute entitled the Confirmation of the Charters, which was very reluctantly conceded by the king in the twenty-fifth year of his reign. I do not know that England has ever produced any patriots to whose memory she owes more gratitude than Humphrey Bohun, Earl of Hereford and Essex, and Roger Bigod, Earl of Norfolk. In the Great Charter the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no further upon an abject tyrant. But to withstand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valour, and success, required a far more intrepid patriotism. Their provocations, if less outrageous than those received from John, were such as evidently manifested a disposition in Edward to reign without any control; a constant refusal to confirm the charters, which in that age were hardly deemed to bind the king without his actual consent; heavy impositions, especially one on the export of wool, and other unwarrantable demands. He had acted with such unmeasured violence toward the clergy, on account of their refusal of further subsidies, that, although the ill-judged policy of that class kept their interests too distinct from those of the people, it was natural for all to be alarmed at the precedent of despotism.[214] These encroachments made resistance justifiable, and the circumstances of Edward made it prudent. His ambition, luckily for the people, had involved him in foreign warfare, from which he could not recede without disappointment and dishonour. Thus was wrested from him that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution, not less important than the Great Charter itself.[215]

It was enacted by 25 Edward I that the charter of liberties,

[214] The fullest account we possess of these domestic transactions from 1294 to 1298 is in Walter Hemingford, one of the historians edited by Hearne, pp. 52–168. They have been vilely perverted by Carte, but extremely well told by Hume, the first writer who had the merit of exposing the character of Edward I. See, too, Knyghton in Twysden's "Decem Scriptores," col. 2492.

[215] Walsingham, in Camden's "Scriptores Rer. Anglicarum," pp. 71–73.

and that of the forest, besides being explicitly confirmed,[216] should be sent to all sheriffs, justices in eyre, and other magistrates throughout the realm, in order to their publication before the people; that copies of them should be kept in cathedral churches, and publicly read twice in the year, accompanied by a solemn sentence of excommunication against all who should infringe them; that any judgment given contrary to these charters should be invalid, and holden for naught. This authentic promulgation, those awful sanctions of the Great Charter, would alone render the statute of which we are speaking illustrious. But it went a great deal further. Hitherto the king's prerogative of levying money by name of tallage or prize from his towns and tenants in demesne had passed unquestioned. Some impositions, that especially on the export of wool, affected all his subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty. By the fifth and sixth sections of this statute "the aids, tasks, and prizes," before taken are renounced as precedents; and the king "grants for him and his heirs, as well to archbishops, bishops, abbots, priors, and other folk of Holy Church, as also to earls, barons, and to all commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prizes, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prizes due and accustomed." The toll upon wool, so far as levied by the king's mere prerogative, is expressly released by the seventh section.[217]

We come now to a part of our subject exceedingly important,

[216] Edward would not confirm the charters, notwithstanding his promise, without the words, salvo jure coronæ nostræ; on which the two earls retired from court. When the confirmation was read to the people at St. Paul's, says Hemingford, they blessed the king on seeing the charters with the great seal affixed; but when they heard the captious conclusion, they cursed him instead. At the next meeting of Parliament, the king agreed to omit these insidious words (p. 168).

[217] The supposed statute, De Tallagio non concedendo, is considered by Blackstone ("Introduction to Charters," p. 67) as merely an abstract of the Confirmatio Chartarum." By that entitled Articuli super Chartas, 28 Edward I, a court was erected in every county of three knights or others, to be elected by the commons of the shire, whose sole province was to determine offences against the two charters, with the power of punishing by fine and imprisonment, but not to extend to any case wherein a remedy by writ was already provided. The Confirmatio Chartarum is properly denominated a statute, and always printed as such; but in form, like Magna Charta, it is a charter, or letters-patent, proceeding from the crown, without even reciting the consent of the realm. And its "teste" is at Ghent, 2 Nov., 1297. Edward having engaged, conjointly with the Count of Flanders, in a war with Philip the Fair. But a Parliament had been held at London, when the barons insisted on these concessions. The circumstances are not wholly unlike those of Magna Charta.

The Lords' Committee do not seem to reject the statute "de tallagio non concedendo" altogether, but say that "if the manuscript containing it (in Corpus Christi College, Cambridge) is a true copy of a statute, it is undoubtedly a copy of a statute of the 25th, and not of a statute of the 34th of Edward I" (p. 230). It seems to me on comparing the two, that the supposed statute de tallagio is but an imperfect transcript of the king's charter at Ghent. But at least, as one exists in an authentic form, and the other is only found in an unauthorized copy, there can be no question which ought to be quoted.

but more intricate and controverted than any other, the constitution of Parliament. I have taken no notice of this in the last section, in order to present uninterruptedly to the reader the gradual progress of our legislature down to its complete establishment under the Edwards. No excuse need be made for the dry and critical disquisition of the following pages; but among such obscure inquiries I can not feel myself as secure from error as I certainly do from partiality.

One constituent branch of the great councils held by William the Conqueror and all his successors was composed of the bishops and the heads of religious houses holding their temporalities immediately of the crown. It has been frequently maintained that these spiritual lords sat in Parliament only by virtue of their baronial tenure. And certainly they did all hold baronies, which, according to the analogy of lay peerages, were sufficient to give them such a share in the legislature. Nevertheless, I think that this is rather too contracted a view of the rights of the English hierarchy, and, indeed, by implication, of the peerage. For a great council of advice and assent in matters of legislation or national importance was essential to all the northern governments. And all of them, except, perhaps, the Lombards, invited the superior ecclesiastics to their councils; not upon any feudal notions, which at that time had hardly begun to prevail, but chiefly as representatives of the Church and of religion itself; next, as more learned and enlightened counsellors than the lay nobility; and in some degree, no doubt, as rich proprietors of land. It will be remembered also that ecclesiastical and temporal affairs were originally decided in the same assemblies, both upon the Continent and in England. The Norman conquest, which destroyed the Anglo-Saxon nobility, and substituted a new race in their stead, could not affect the immortality of church possessions. The bishops of William's age were entitled to sit in his councils by the general custom of Europe, and by the common law of England, which the conquest did not overturn.[218] Some smaller arguments might be urged against the supposition that their legislative rights are merely baronial; such as that the guardian of the spiritualities was commonly summoned to Parliament during the vacancy of a bishopric, and that the five sees created by Henry VIII have no baronies annexed to them;[219] but the former reasoning appears less technical and confined.[220]

Next to these spiritual lords are the earls and barons, or lay peerage of England. The former dignity was, perhaps, not so

[218] Hody ("Treatise on Convocations," p. 126) states the matter thus: In the Saxon times all bishops and abbots sat and voted in the state councils, or Parliament, as such, and not on account of their tenures. After the conquest the abbots sat there not as such, but by virtue of their tenures, as barons; and the bishops sat in a double capacity, as bishops and as barons.

[219] Hody, p. 128.

[220] [Note I.]

merely official as in the Saxon times, although the earl was entitled to the third penny of all emoluments arising from the administration of justice in the county courts, and might, perhaps, command the militia of his county when it was called forth.[221] Every earl was also a baron, and held an honour or barony of the crown, for which he paid a higher relief than an ordinary baron, probably on account of the profits of his earldom. I will not pretend to say whether titular earldoms, absolutely distinct from the lieutenancy of a county, were as ancient as the conquest, which Madox seems to think, or were considered as irregular so late as Henry II, according to Lord Littleton. In Dugdale's "Baronage" I find none of this description in the first Norman reigns, for even that of Clare was connected with the local earldom of Hertford.

It is universally agreed that the only baronies known for two centuries after the conquest were incident to the tenure of land held immediately from the crown. There are, however, material difficulties in the way of rightly understanding their nature which ought not to be passed over, because the consideration of baronial tenures will best develop the formation of our parliamentary system. Two of our most eminent legal antiquaries, Selden and Madox, have entertained different opinions as to the characteristics and attributes of this tenure.

According to the first, every tenant in chief by knight-service was an honorary or parliamentary baron by reason of his tenure. All these were summoned to the king's councils, and were peers of his court. Their baronies, or honours, as they were frequently called, consisted of a number of knight's fees; that is, of estates, from each of which the feudal service of a knight was due; not fixed to thirteen fees and a third, as has been erroneously conceived, but varying according to the extent of the barony and the reservation of service at the time of its creation. Were they more or fewer, however, their owner was equally a baron, and summoned to serve the king in Parliament with his advice and judgment, as appears by many records and passages in history.

But about the latter end of John's reign, some only of the most eminent tenants in chief were summoned by particular writs; the rest by one general summons through the sheriffs of their several counties. This is declared in the Great Charter

[221] Madox, "Baronia Anglica," p. 138; "Dialogus de Scaccario," l. i, c. 17; Littleton's "Henry II," vol. ii, p. 217. The last of these writers supposes, contrary to Selden, that the earls continued to be governors of their counties under Henry II. Stephen created a few titular earls, with grants of crown lands to support them; but his successor resumed the grants, and deprived them of their earldoms.

In Rymer's "Fœdera," vol. i, p. 3, we find a grant of Matilda, creating Milo of Gloucester Earl of Hereford, with the moat and castle of that city in fee to him and his heirs, the third penny of the rent of the city, and of the pleas in the county, three manors and a forest, and the service of three tenants in chief, with all their fiefs, to be held with all privileges and liberties as fully as ever any earl in England had possessed them.

of that prince, wherein he promises that, whenever an aid or scutage shall be required, faciemus summoneri archiepiscopos, episcopos, abbates, comites et majores barones regni sigillatim per literas nostras. Et præterea faciemus summoneri in generali per vicecomites et ballivos nostros omnes alios qui in capite tenent de nobis. Thus the barons are distinguished from other tenants in chief, as if the former name were only applicable to a particular number of the king's immediate vassals. But it is reasonable to think that, before this charter was made, it had been settled by the law of some other Parliament how these greater barons should be distinguished from the lesser tenants in chief, else what certainty could there be in an expression so general and indefinite? And this is likely to have proceeded from the pride with which the ancient and wealthy barons of the realm would regard those newly created by grants of escheated honours, or those decayed in estate, who yet were by their tenures on an equality with themselves. They procured, therefore, two innovations in their condition: first, that these inferior barons should be summoned generally by the sheriff, instead of receiving their particular writs, which made an honorary distinction; and next, that they should pay relief, not, as for an entire barony, one hundred marks, but at the rate of five pounds for each knight's fee which they held of the crown. This changed their tenure to one by mere knight-service, and their denomination to tenants in chief. It was not difficult afterward for the greater barons to exclude any from coming to Parliament as such without particular writs directed to them, for which purpose some law was probably enacted in the reign of Henry III. If indeed we could place reliance on a nameless author whom Camden has quoted, this limitation of the peerage to such as were expressly summoned depended upon a statute made soon after the battle of Evesham. But no one has ever been able to discover Camden's authority, and the change was probably of a much earlier date.[222]

Such is the theory of Selden, which, if it rested less upon conjectural alterations in the law, would undoubtedly solve some material difficulties that occur in the opposite view of the subject. According to Madox, tenure by knight-service in chief was always distinct from that by barony. It is not easy, however, to point out the characteristic differences of the two; nor has that eminent antiquary, in his large work, the "Baronia Anglica," laid down any definition, or attempted to explain the real nature of a barony. The distinction could not consist in the number of knight's fees; for the barony of Hwayton consisted of only three, while John de Baliol held thirty fees by mere

[222] Selden's works, vol. iii, pp. 713–734.

knight-service.[223] Nor does it seem to have consisted in the privilege or service of attending Parliament, since all tenants in chief were usually summoned. But whatever may have been the line between these modes of tenure, there seems complete proof of their separation long before the reign of John. Tenants in chief are enumerated distinctly from earls and barons in the charter of Henry I. Knights, as well as barons, are named as present in the Parliament of Northampton in 1165, in that held at the same town in 1176, and upon other occasions.[224] Several persons appear in the "Liber Niger Scaccarii," a roll of military tenants made in the age of Henry II, who held single knight's fees of the crown. It is, however, highly probably that, in a lax sense of the word, these knights may sometimes have been termed barons. The author of the "Dialogus de Scaccario" speaks of those holding greater or lesser baronies, including, as appears by the context, all tenants in chief.[225] The former of these seem to be the majores barones of King John's charter. And the secundæ dignitatis barones, said by a contemporary historian to have been present in the Parliament of Northampton, were in all probability no other than the knightly tenants of the crown.[226] For the word baro, originally meaning only a man, was of very large significance, and is not infrequently applied to common freeholders, as in the phrase of court baron. It was used, too, for the magistrates or chief men of cities, as it is still for the judges of the exchequer and the representatives of the Cinque Ports.[227]

The passage, however, before cited from the Great Charter of John affords one spot of firm footing in the course of our progress. Then, at least, it is evident that all tenants in chief were entitled to their summons; the greater barons by particular writs, the rest through one directed to their sheriff. The epoch when all who, though tenants in chief, had not been actually summoned, were deprived of their right of attendance in Parliament, is again involved in uncertainty and conjecture. The unknown writer quoted by Camden seems not sufficient authority to establish his assertion that they were excluded by a statute made after the battle of Evesham. The principle was most likely acknowledged at an earlier time. Simon de Montfort summoned only twenty-three temporal peers to his famous

[223] Littleton's "Henry II," vol. ii, p. 212.

[224] Hody on "Convocations," pp. 222, 234.

[225] Lib. ii, c. 9.

[226] Hody and Lord Littleton maintain these "barons of the second rank" to have been the subvassals of the crown; tenants of the great barons to whom the name was sometimes improperly applied. This was very consistent with their opinion that the commons were a part of Parliament at that time. But Hume, assuming at once the truth of their interpretation in this instance, and the falsehood of their system, treats it as a deviation from the established rule, and a proof of the unsettled state of the constitution.

[227] [Note II.]

Parliament. In the year 1255 the barons complained that many of their number had not received their writs according to the tenor of the charter, and refused to grant an aid to the king till they were issued.[228] But it would have been easy to disappoint this mode of packing a Parliament if an unsummoned baron could have sat by mere right of his tenure. The opinion of Selden, that a law of exclusion was enacted toward the beginning of Henry's reign, is not liable to so much objection. But perhaps it is unnecessary to frame a hypothesis of this nature. Writs of summons seem to have been older than the time of John;[229] and when this had become the customary and regular preliminary of a baron's coming to Parliament, it was a natural transition to look upon it as an indispensable condition; in times when the prerogative was high, the law unsettled, and the service in Parliament deemed by many still more burdensome than honourable. Some omissions in summoning the king's tenants to former Parliaments may perhaps have produced the above-mentioned provision of the Great Charter, which had a relation to the imposition of taxes wherein it was deemed essential to obtain a more universal consent than was required in councils held for state or even for advice.[230]

It is not easy to determine how long the inferior tenants in chief continued to sit personally in Parliament. In the charters of Henry III, the clause which we have been considering is omitted: and I think there is no express proof remaining that the sheriff was ever directed to summon the king's military tenants within his county, in the manner which the charter of John required. It appears, however, that they were in fact members of Parliament on many occasions during Henry's reign, which shows that they were summoned either by particular writs or through the sheriff, and the latter is the more plausible conjecture. There is, indeed, great obscurity as to the constitution of Parliament in this reign; and the passages which I am about to produce may lead some to conceive that the freeholders were represented even from its beginning. I rather incline to a different opinion.

In the Magna Charta of 1 Henry III it is said: Pro hâc donatione et concessione . . . archiepiscopi, episcopi, comites, barones, milites, et liberè tenentes, et omnes de regno nostro, dederunt nobis quintam decimam partem omnium bonorum suorum mobilium.[231] So in a record of 19 Henry III: Comites, et barones, et omnes alii de toto regno nostro Angliæ, spontaneâ

[228] M. Paris, p. 785. The barons even tell the king that this was contrary to his charter, in which nevertheless the clause to that effect contained in his father's charter had been omitted.

[229] Henry II, in 1175, forbade any of those who had been concerned in the late rebellion to come to his court without a particular summons. (Carte, vol. ii, p. 249.)

[230] Upon the subject of tenure by barony, besides the writers already quoted, see West's "Inquiry into the Method of creating Peers," and Carte's "History of England," vol. ii, p. 247.

[231] Hody on "Convocations," p. 293.

voluntate suâ concesserunt nobis efficax auxilium.[232] The largeness of these words is, however, controlled by a subsequent passage, which declares the tax to be imposed ad mandatum omnium comitum et baronum et omnium aliorum qui de nobis tenent in capite. And it seems to have been a general practice to assume the common consent of all ranks to that which had actually been agreed by the higher. In a similar writ, 21 Henry III, the ranks of men are enumerated specifically: archiepiscopi, episcopi, abbates, priores, et clerici terras habentes quæ ad ecclesias suas non pertinent, comites, barones, milites, et liberi homines, pro se et suis villanis, nobis concesserunt in auxilium tricesimam partem omnium mobilium.[233] In the close roll of the same year, we have a writ directed to the archbishops, bishops, abbots, priors, earls, barons, knights, and freeholders (liberi homines) of Ireland, in which an aid is desired of them, and it is urged that one had been granted by his fideles Angliæ.[234]

But this attendance in Parliament of inferior tenants in chief, some of them too poor to have received knighthood, grew insupportably vexatious to themselves, and was not well liked by the king. He knew them to be dependent upon the barons, and dreaded the confluence of a multitude, who assumed the privilege of coming in arms to the appointed place. So inconvenient and mischievous a scheme could not long subsist among an advancing people, and fortunately the true remedy was discovered with little difficulty.

The principle of representation, in its widest sense, can hardly be unknown to any government not purely democratical. In almost every country the sense of the whole is understood to be spoken by a part, and the decisions of a part are binding upon the whole. Among our ancestors the lord stood in the place of his vassals, and, still more unquestionably, the abbot in that of his monks. The system, indeed, of ecclesiastical councils, considered as organs of the Church, rested upon the principle of a virtual or an express representation, and had a tendency to render its application to national assemblies more familiar.

The first instance of actual representation which occurs in our history is only four years after the conquest, when William, if we may rely on Hoveden, caused twelve persons skilled in the customs of England to be chosen from each county, who were sworn to inform him rightly of their laws; and these, so ascertained, were ratified by the consent of the great council. This Sir Matthew Hale asserts to be "as sufficient and effectual a Parliament as ever was held in England."[235] But there is no

[232] Brady, "Introduction to History of England," appendix, p. 43.
[233] Brady's "History of England," vol. i, appendix, p. 182.
[234] Brady's "Introduction," p. 94.
[235] "Hist. of Common Law," vol. i, p. 202.

appearance that these twelve deputies of each county were invested with any higher authority than that of declaring their ancient usages. No stress can be laid at least on this insulated and anomalous assembly, the existence of which is only learned from a historian of a century later.[236]

We find nothing that can arrest our attention, in searching out the origin of county representation, till we come to a writ in the fifteenth year of John, directed to all the sheriffs in the following terms: Rex Vicecomiti N., salutem. Præcipimus tibi quod omnes milites ballivæ tuæ qui summoniti fuerunt esse apud Oxonian ad Nos a die Omnium Sanctorum in quindecim dies venire facias cum armis suis: corpora vero baronum sine armis singulariter, et quatuor discretos milites de comitatu tuo, illuc venire facias ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri. For the explanation of this obscure writ I must refer to what Prynne has said;[237] but it remains problematical whether these four knights (the only clause which concerns our purpose) were to be elected by the county or returned in the nature of a jury, at the discretion of the sheriff. Since there is no sufficient proof whereon to decide, we can only say with hesitation that there may have been an instance of county representation in the fifteenth year of John.

We may next advert to a practice, of which there is very clear proof in the reign of Henry III. Subsidies granted in Parliament were assessed, not as in former times by the justices upon their circuits, but by knights freely chosen in the county court. This appears by two writs, one of the fourth and one of the ninth year of Henry III.[238] At a subsequent period, by a provision

[236] This assembly is mentioned in the preamble, and afterward, of the spurious laws of Edward the Confessor; and I have been accused of passing it over too slightly. The fact certainly does not rest on the authority of Hoveden, who transcribes these laws verbatim, and they are in substance an ancient document. There seems to me somewhat rather suspicious in this assemblage of delegates; it looks like a pious fraud to maintain the old Saxon jurisprudence, which was giving way. But even if we admit the facts as here told, I still adhere to the assertion that there is no appearance that these twelve deputies of each county were invested with any higher authority than that of declaring their ancient usages. Any supposition of a real legislative Parliament would be inconsistent with all that we know of the state of England under the Conqueror. And what an anomaly, upon every constitutional principle, Anglo-Saxon or Norman, would be a Parliament of twelve from each county! Nor is it perfectly manifest that they were chosen by the people; the word summoneri fecit is first used; and afterward, electis de (not in) singulis totius patriæ comitatibus. This might be construed of the king's selection; but perhaps the common interpretation is rather the better.

William, the compiler informs us, having heard some of the Danish laws, was disposed to confirm them in preference to those of England; but yielded to the supplication of the delegates, omnes compatriotæ, qui leges narraverant, that he would permit them to retain the customs of their ancestors, imploring him by the soul of King Edward, cujus erant leges, nec aliorum exterorum. The king at length gave way, by the advice and request of his barons, consilio et precatu baronum. These, of course, were Normans; but what inference can be drawn in favour of parliamentary representation in England from the behaviour of the rest? They were supplicants, not legislators.

[237] 2 Prynne's "Register," p. 16.

[238] Brady's "Introduction," appendix, pp. 1 and 44. "The language of these writs implies a distinction between such as were styled barons, apparently includ-

of the Oxford Parliament in 1258, every county elected four knights to inquire into grievances, and deliver their inquisition into Parliament.[239]

The next writ now extant that wears the appearance of parliamentary representation is in the thirty-eighth of Henry III. This, after reciting that the earls, barons, and other great men (cæteri magnates) were to meet at London three weeks after Easter, with horses and arms, for the purpose of sailing into Gascony, requires the sheriff to compel all within his jurisdiction, who hold twenty pounds a year of the king in chief, or of those in ward of the king, to appear at the same time and place. And that besides those mentioned he shall cause to come before the king's council at Westminster, on the fifteenth day after Easter, two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king in such an emergency.[240] In the principle of election, and in the object of the assembly, which was to grant money, this certainly resembles a summons to Parliament. There are, indeed, anomalies sufficiently remarkable upon the face of the writ which distinguish this meeting from a regular Parliament. But when the scheme of obtaining money from the commons of shires through the consent of their representatives had once been entertained, it was easily applicable to more formal councils of the nation.[241]

A few years later there appears another writ analogous to

ing the earls and the four knights who were to come from the several counties ad loquendum, and who were also distinguished from the knights summoned to attend with arms, in performance, it should seem, of the military service due by their respective tenures; and the writs, therefore, apparently distinguished certain tenants in chief by knight-service from barons, if the knights so summoned to attend with arms were required to attend by reason of their respective tenures in chief of the king. How the four knights of each county who were thus summoned to confer with the king were to be chosen, whether by the county, or according to the mere will of the sheriff, does not appear; but it seems most probable that they were intended by the king as representatives of the freeholders of each county, and to balance the power of the hostile nobles, who were then leagued against him; and the measure might lead to conciliate the minds of those who would otherwise have had no voice in the legislative assembly." ("Report of Lords' Committee," p. 61.)

This would be a remarkable fact, and the motive is by no means improbable, being perhaps that which led to the large provisions for summoning tenants in chief, contained in the charter of John, and afterward passed over. But this parley of the four knights from each county, for they are only summoned ad loquendum, may not amount to bestowing on them any legislative power. It is nevertheless to be remembered that the word Parliament meant, by its etymology, nothing more; and the words, ad loquendum, may have been used in reference to that. It is probable that these writs were not obeyed; we have no evidence that they were, and it was a season of great confusion, very little before the granting of the charter of Henry III.

[239] Brady's "Hist. of England," vol. i, appendix, p. 227.

[240] 2 Prynne, p. 23.

[241] "This writ tends strongly to show that there then existed no law by which a representation either of the king's tenants in capite or of others, for the purpose of constituting a legislative assembly, or for granting an aid, was specially provided; and it seems to have been the first instance appearing on any record now extant, of an attempt to substitute representatives elected by bodies of men for the attendance of the individual so to be represented, personally or by their several procurators, in an assembly convened for the purpose of obtaining an aid." ("Report," p. 95.)

a summons. During the contest between Henry III and the confederate barons in 1261, they presumed to call a sort of Parliament, summoning three knights out of every county, secum tractaturos super communibus negotiis regni. This we learn only by an opposite writ issued by the king, directing the sheriff to enjoin these knights who had been convened by the Earls of Leicester and Gloucester to their meeting at St. Alban's, that they should repair instead to the king at Windsor, and to no other place, nobiscum super præmissis colloquium habituros.[242] It is not absolutely certain that these knights were elected by their respective counties. But even if they were so, this assembly has much less the appearance of a Parliament than that in the thirty-eighth of Henry III.

At length, in the year 1265, the forty-ninth of Henry III, while he was a captive in the hands of Simon de Montfort, writs were issued in his name to all the sheriffs, directing them to return two knights for the body of their county, with two citizens or burgesses for every city and borough contained within it. This, therefore, is the epoch at which the representation of the commons becomes indisputably manifest, even should we reject altogether the more equivocal instances of it which have just been enumerated.

If, indeed, the knights were still elected by none but the king's military tenants, if the mode of representation was merely adopted to spare them the inconvenience of personal attendance, the immediate innovation in our polity was not very extensive. This is an interesting but very obscure topic of inquiry. Spelman and Brady, with other writers, have restrained the original right of election to tenants in chief, among whom, in process of time, those holding under mesne lords, not being readily distinguishable in the hurry of an election, contrived to slide in, till at length their encroachments were rendered legitimate by the statute 7 Henry IV, c. 15, which put all suitors to the county court on an equal footing as to the elective franchise. The argument on this side might be plausibly urged with the following reasoning:

The spirit of a feudal monarchy, which compelled every lord to act by the advice and assent of his immediate vassals, established no relation between him and those who held nothing at his hands. They were included, so far as he was concerned, in their superiors; and the feudal incidents were due to him from the whole of his vassal's fief, whatever tenants might possess it by subinfeudation. In England the tenants in chief alone were called to the great councils before representation was thought of, as is evident both by the charter of John and by the language

[242] 2 Prynne, p. 27.

of many records; nor were any others concerned in levying aids or escuages, which were only due by virtue of their tenure. These military tenants were become, in the reign of Henry III, far more numerous than they had been under the Conqueror. If we include those who held of the king ut de honore—that is, the tenants of baronies escheated or in ward, who may probably have enjoyed the same privileges, being subject in general to the same burdens—their number will be greatly augmented, and form no inconsiderable portion of the freeholders of the kingdom. After the statute commonly called Quia emptores in the eighteenth of Edward I, they were likely to increase much more, as every licensed alienation of any portion of a fief by a tenant in chief would create a new freehold immediately depending upon the crown. Many of these tenants in capite held very small fractions of knight's fees, and were consequently not called upon to receive knighthood. They were plain freeholders holding in chief, and the liberi homines or libere tenentes of those writs which have been already quoted. The common form, indeed, of writs to the sheriff directs the knights to be chosen de communitate comitatûs. But the word communitas, as in boroughs, denotes only the superior part: it is not unusual to find mention in records of communitas populi or omnes de regno, where none are intended but the barons, or at most the tenants in chief. If we look attentively at the earliest instance of summoning knights of shires to Parliament, that in 38 Henry III, which has been noticed above, it will appear that they could only have been chosen by military tenants in chief. The object of calling this Parliament, if Parliament it were, was to obtain an aid from the military tenants, who, holding less than a knight's fee, were not required to do personal service. None then, surely, but the tenants in chief could be electors upon this occasion, which merely respected their feudal duties. Again, to come much lower down, we find a series of petitions in the reigns of Edward III and Richard II, which seem to lead us to a conclusion that only tenants in chief were represented by the knights of shires. The writ for wages directed the sheriff to levy them on the commons of the county, both within franchises and without (tam intra libertates quam extra). But the tenants of lords holding by barony endeavoured to exempt themselves from this burden, in which they seem to have been countenanced by the king. This led to frequent remonstrances from the commons, who finally procured a statute that all lands which had been accustomed to contribute toward the wages of members should continue to do so, even though they should be purchased by a lord.[243] But, if these mesne tenants had possessed equal rights of voting with

[243] 12 Ric. II, c. 12; Prynne's "Fourth Register."

tenants in chief, it is impossible to conceive that they would have thought of claiming so unreasonable an exemption. Yet, as it would appear harsh to make any distinction between the rights of those who sustained an equal burden, we may perceive how the freeholders holding of mesne lords might on that account obtain after the statute a participation in the privilege of tenants in chief. And without supposing any partiality or connivance, it is easy to comprehend that, while the nature of tenures and services was so obscure as to give rise to continual disputes, of which the ancient records of the King's Bench are full, no sheriff could be very accurate in rejecting the votes of common freeholders repairing to the county court, and undistinguishable, as must be allowed, from tenants in capite upon other occasions, such as serving on juries or voting on the election of coroners. To all this it yields some corroboration that a neighbouring though long hostile kingdom, who borrowed much of her law from our own, has never admitted any freeholders, except tenants in chief of the crown, to a suffrage in county elections. These attended the Parliament of Scotland in person till 1428, when a law of James I permitted them to send representatives.[244]

Such is, I think, a fair statement of the arguments that might be alleged by those who would restrain the right of election to tenants of the crown. It may be urged, on the other side, that the genius of the feudal system was never completely displayed in England; much less can we make use of that policy to explain institutions that prevailed under Edward I. Instead of aids and scutages levied upon the king's military tenants, the crown found ample resources in subsidies upon movables, from which no class of men was exempted. But the statute that abolished all unparliamentary taxation led, at least in theoretical principle, to extend the elective franchise to as large a mass of the people as could conveniently exercise it. It was even in the mouth of our kings that what concerned all should be approved by all. Nor is the language of all extant writs less adverse to the supposition that the right of suffrage in county elections was limited to tenants in chief. It seems extraordinary that such a restriction, if it existed, should never be deducible from these instruments; that their terms should invariably be large enough to comprise all freeholders. Yet no more is ever required of the sheriff than to return two knights chosen by the body of the county. For they are not only said to be returned pro communitate, but "per communitatem," and "de assensu totius communitatis." Nor is it satisfactory to allege, without any proof, that this word

[244] Pinkerton's "Hist. of Scotland," volume i, pages 120, 357. But this law was not regularly acted upon till 1587 (p. 368).

should be restricted to the tenants in chief, contrary to what must appear to be its obvious meaning.[245] Certainly, if these tenants of the crown had found inferior freeholds usurping a right of suffrage, we might expect to find it the subject of some legislative provision, or at least of some petition and complaint. And, on the other hand, it would have been considered as unreasonable to levy the wages due to knights of the shire for their service in Parliament on those who had no share in their election. But it appears by writs at the very beginning of Edward II's reign that wages were levied "de communitate comitatus."[246] It will scarcely be contended that no one was to contribute under this writ but tenants in chief; and yet the word communitas can hardly be applied to different persons when it occurs in the same instrument and upon the same matter. The series of petitions above mentioned relative to the payment of wages rather tends to support a conclusion that all mesne tenants had the right of suffrage, if they thought fit to exercise it, since it was earnestly contended that they were liable to contribute toward that expense. Nor does there appear any reason to doubt that all freeholders, except those within particular franchises, were suitors to the county court—an institution of no feudal nature, and in which elections were to be made by those present. As to the meeting to which knights of shires were summoned in 38 Henry III, it ought not to be reckoned a Parliament, but rather one of those anomalous conventions which sometimes occurred in the unfixed state of government. It is, at least, the earliest known instance of representation, and leads us to no conclusion in respect of later times, when the commons had become an essential part of the legislature, and their consent was required to all public burdens.

This question, upon the whole, is certainly not free from considerable difficulty. The legal antiquaries are divided. Prynne does not seem to have doubted but that the knights were "elected in the full county, by and for the whole county," without respect to the tenure of the freeholders.[247] But Brady and Carte are of a different opinion.[248] Yet their disposition to narrow the basis of the constitution is so strong that it creates a sort of prejudice

[245] What can one who adopts this opinion of Dr. Brady say to the following record? Rex militibus, liberis hominibus, et toti communitati comitatus Wygorniæ tam intra libertates quam extra, salutem. Cum comites, barones, milites, liberi homines, et communitates comitatuum regni nostri vicesimam omnium bonorum suorum mobilium, civesque et burgenses et communitates omnium civitatum et burgorum ejusdem regni, necnon tenentes de antiquis dominicis coronæ nostræ quindecimam bonorum suorum mobilium nobis concesserunt. ("Pat. Rot."; 1 E. II, in "Rot. Parl.," vol. i, p. 442; see also pp. 241 and 269.) If the word communitas is here used in any precise sense, which, when possible, we are to suppose in construing a legal instrument, it must designate, not the tenants in chief, but the inferior class, who, though neither freeholders nor free burgesses, were yet contributable to the subsidy on their goods.

[246] Madox, "Firma Burgi," pp. 99 and 102, note Z.

[247] Prynne's "Second Register," p. 50.

[248] Carte's "Hist. of England," ii, 250.

against their authority. And if I might offer an opinion on so obscure a subject, I should be much inclined to believe that, even from the reign of Henry III, the election of knights by all freeholders in the county court, without regard to tenure, was little, if at all, different from what it is at present.[249]

The progress of towns in several continental countries, from a condition bordering upon servitude to wealth and liberty, has more than once attracted our attention in other parts of the present work. Their growth in England, both from general causes and imitative policy, was very similar and nearly coincident. Under the Anglo-Saxon line of sovereigns we scarcely can discover in our scanty records the condition of their inhabitants, except retrospectively from the great survey of "Doomsday Book," which displays the state of England under Edward the Confessor. Some attention to commerce had been shown by Alfred and Athelstan; and a merchant who had made three voyages beyond sea was raised by law of the latter monarch to the dignity of a thane.[250] This privilege was not perhaps often claimed; but the burgesses of towns were already a distinct class from the ceorls or rustics, and, though hardly free according to our estimation, seem to have laid the foundation of more extensive immunities. It is probable, at least, that the English towns had made fully as great advances toward emancipation as those of France. At the conquest we find the burgesses or inhabitants of towns living under the superiority or protection of the king, or of some other lord, to whom they paid annual rents, and determinate dues or customs. Sometimes they belonged to different lords, and sometimes the same burgess paid customs to one master, while he was under the jurisdiction of another. They frequently enjoyed special privileges as to inheritance; and in two or three instances they seem to have possessed common property, belonging to a sort of guild or corporation, and in some instances, perhaps, had a municipal administration by magistrates of their own choice.[251] Besides the

[249] The present question has been discussed with much ability in the "Edinburgh Review," vol. xxvi, p. 341. [Note III.]

[250] Wilkins, p. 71.

[251] Burgensis Exoniæ urbis habent extra civitatem terram duodecim carucatarum: quæ nullam consuetudinem reddunt nisi ad ipsam civitatem. ("Doomsday," p. 100.) At Canterbury the burgesses had forty-five houses without the city, de quibus ipsi habebant gablum et consuetudinem, rex autem socam et sacam; ipsi quoque burgenses habebant de rege triginta tres acras prati in gildam, suam (p. 2). In Lincoln and Stamford some resident proprietors, called Lagemanni, had jurisdiction (socam et sacam) over their tenants. But nowhere have I been able to discover any trace of municipal self-government; unless Chester may be deemed an exception, where we read of twelve judices civitatis; but by whom constituted does not appear. The word lageman seems equivalent to judex. The guild mentioned above at Canterbury was, in all probability, a voluntary association: so at Dover we find the burgesses' guildhall, gihalla burgensium (p. 1).

Many of the passages in "Doomsday" relative to the state of burgesses are collected in Brady's "History of Boroughs"; a work which, if read with due suspicion of the author's honesty, will convey a great deal of knowledge.

Since the former part of this note was written, I have met with a charter

regular payments, which were in general not heavy, they were liable to tallages at the discretion of their lords. This burden continued for two centuries, with no limitation, except that the barons were latterly forced to ask permission of the king before they set a tallage on their tenants, which was commonly done when he imposed one upon his own.[252] Still the towns became considerably richer; for the profits of their traffic were undiminished by competition, and the consciousness that they could not be individually despoiled of their possessions, like the villeins of the country around, inspired an industry and perseverance which all the rapacity of Norman kings and barons was unable to daunt or overcome.

One of the earliest and most important changes in the condition of the burgesses was the conversion of their individual tributes into a perpetual rent from the whole borough. The town was then said to be affirmed, or let in fee-farm, to the burgesses and their successors forever.[253] Previously to such a grant the lord held the town in his demesne, and was the legal proprietor of the soil and tenements, though I by no means apprehend that the burgesses were destitute of a certain estate in their possessions. But of a town in fee-farm he only kept the superiority and the inheritance of the annual rent, which he might recover by distress.[254] The burgesses held their lands by burgage tenure, nearly analogous to, or rather a species of, free socage.[255] Perhaps before the grant they might correspond to modern copyholders. It is of some importance to observe that the lord, by such a grant of the town in fee-farm, whatever we may think of its previous condition, divested himself of his property, or lucrative dominion over the soil, in return for the perpetual rent;

granted by Henry II to Lincoln, which seems to refer, more explicitly than any similar instrument, to municipal privileges of jurisdiction enjoyed by the citizens under Edward the Confessor. These charters, it is well known, do not always recite what is true; yet it is possible that the citizens of Lincoln, which had been one of the five Danish towns, sometimes mentioned with a sort of distinction by writers before the conquest, might be in a more advantageous situation than the generality of burgesses. Sciatis me concessisse civibus meis Lincoln, omnes libertates et consuetudines et leges suas, quas habuerunt tempore Edwardi et Will. et Henr. regum Angliæ et gildam suam mercatoriam de hominibus civitatis et de aliis mercatoribus comitatus, sicut illam habuerunt tempore predictorum, antecessorum nostrorum, regum Angliæ, melius et liberius. Et omnes homines qui infra quatuor divisas civitates manent et mercatum deducunt, sint ad gildas, et consuetudines et assisas civitatis, sicut melius fuerunt temp. Edw. et Will. et Hen. regum Angliæ. (Rymer, tome i, p. 40, edit. 1816.)

I am indebted to the friendly remarks of the periodical critic whom I have before mentioned for reminding me of other charters of the same age, expressed in a similar manner, which in my haste I had overlooked, though printed in common books. But whether these general words ought to outweigh the silence of "Doomsday Book" I am not prepared to decide. I have admitted below that the possession of corporate property implies an elective government for its administration, and I think it perfectly clear that the guilds made by-laws for the regulation of their members. Yet this is something different from municipal jurisdiction over all the inhabitants of a town. [Note IV.]

[252] Madox, "Hist. of Exchequer," c. 17.

[253] Madox, "Firma Burgi," p. 1. There is one instance, I know not if any more could be found, of a firma burgi before the conquest. It was at Huntingdon. ("Doomsday," p. 203.)

[254] Madox, pp. 12, 13.

[255] Id., p. 21.

so that tallages subsequently set at his own discretion upon the inhabitants, however common, can hardly be considered as a just exercise of the rights of proprietorship.

Under such a system of arbitrary taxation, however, it was evident to the most selfish tyrant that the wealth of his burgesses was his wealth, and their prosperity his interest; much more were liberal and sagacious monarchs, like Henry II, inclined to encourage them by privileges. From the time of William Rufus there was no reign in which charters were not granted to different towns of exemption from tolls on rivers and at markets, those lighter manacles of feudal tyranny; or of commercial franchises; or of immunity from the ordinary jurisdictions; or, lastly, of internal self-regulation. Thus the original charter of Henry I to the city of London [256] concedes to the citizens, in addition to valuable commercial and fiscal immunities, the right of choosing their own sheriff and justice, to the exclusion of every foreign jurisdiction.[257] These grants, however, were not in general so extensive till the reign of John.[258] Before that time the interior arrangement of towns had received a new organization. In the Saxon period we find voluntary associations, sometimes religious, sometimes secular; in some cases for mutual defence against injury, in others for mutual relief in poverty. These were called guilds, from the Saxon verb gildan, to pay or contribute, and exhibited the natural, if not the legal, character of corporations.[259] At the time of the conquest, as has been mentioned

[256] I have read somewhere that this charter was granted in 1101. But the instrument itself, which is only preserved by an Inspeximus of Edward IV, does not contain any date. (Rymer, tome i, p. 11, edit. 1816.) Could it be traced so high, the circumstance would be remarkable, as the earliest charters granted by Louis VI, supposed to be the father of these institutions, are several years later.

It is said by Mr. Thorpe ("Ancient Laws of England," p. 267) that, though there are ten witnesses, he only finds one who throws any light on the date: namely, Hugh Bigod, who succeeded his brother William in 1120. But Mr. Thorpe does not mention in what respect he succeeded. It was as dapifer regis; but he is not so named in the charter. (Dugdale's "Baronage," p. 132.) The date, therefore, still seems problematical.

[257] This did not, however, save the citizens from paying one hundred marks to the king for this privilege. (Mag. Rot. 5 Steph., apud Madox, "Hist. Exchequer," tome xi.) I do not know that the charter of Henry I can be suspected; but Brady, in his treatise of "Boroughs" (p. 38, edit. 1777), does not think proper once to mention it; and, indeed, uses many expressions incompatible with its existence.

[258] Blomefield, "Hist. of Norfolk," vol. iii, p. 16, says that Henry I granted the same privileges by charter to Norwich in 1122 which London possessed. Yet it appears that the king named the portreeve or provost; but Blomefield suggests that he was probably recommended by the citizens, the office being annual.

[259] Madox, "Firma Burgi," p. 23. Hickes has given us a bond of fellowship among the thanes of Cambridgeshire, containing several curious particulars. A composition of eight pounds, exclusive, I conceive, of the usual weregild, was to be enforced from the slayer of any fellow. If a fellow (gilda) killed a man of 1,200 shillings weregild, each of the society was to contribute half a mark; for a ceorl, two oræ (perhaps ten shillings); for a Welshman, one. If, however, this act was committed wantonly, the fellow had no right to call on the society for contribution. If one fellow killed another, he was to pay the legal weregild to his kindred, and also eight pounds to the society. Harsh words used by one fellow toward another, or even toward a stranger, incurred a fine. No one was to eat or drink in the company of one who had killed his brother fellow, unless in the presence of the king, bishop, or alderman. ("Dissertatio Epistolaris," p. 21.)

We find in Wilkins's "Anglo-Saxon Laws," p. 65, a number of ordinances sworn to by persons both of noble and

above, such voluntary incorporations of the burgesses possessed in some towns either landed property of their own or rights of superiority over that of others. An internal elective government seems to have been required for the administration of a common revenue, and of other business incident to their association.[260] They became more numerous and more peculiarly commercial after that era, as well from the increase of trade as through imitation of similar fraternities existing in many towns of France. The spirit of monopoly gave strength to those institutions, each class of traders forming itself into a body, in order to exclude competition. Thus were established the companies in corporate towns, that of the Weavers in London being perhaps the earliest,[261] and these were successively consolidated and sanctioned by charters from the crown. In towns not large enough to admit of distinct companies, one merchant guild comprehended the traders in general, or the chief of them; and this, from the reign of Henry II downward, became the subject of incorporating charters. The management of their internal concerns, previously to any incorporation, fell naturally enough into a sort of oligarchy, which the tenor of the charter generally preserved. Though the immunities might be very extensive, the powers were more or less restrained to a small number. Except in a few places, the right of choosing magistrates was first given by King John; and certainly must rather be ascribed to his poverty than to any enlarged policy, of which he was utterly incapable.[262]

From the middle of the twelfth century to that of the thirteenth the traders of England became more and more prosperous. The towns on the southern coast exported tin and other metals in exchange for the wines of France; those on the eastern sent corn to Norway—the Cinque Ports bartered wool against the stuffs of Flanders.[263] Though bearing no comparison with the cities of Italy or the empire, they increased sufficiently to

ignoble rank (ge eorlisce ge ceorlisce), and confirmed by King Athelstan. These are in the nature of by-laws for the regulation of certain societies that had been formed for the preservation of public order. Their remedy was rather violent: to kill and seize the effects of all who should rob any member of the association. This property, after deducting the value of the things stolen, was to be divided into two parts; one given to the criminal's wife if not an accomplice, the other shared between the king and the society.

In another fraternity among the clergy and laity of Exeter every fellow was entitled to a contribution in case of taking a journey, or if his house was burned. Thus they resembled, in some degree, our friendly societies; and display an interesting picture of manners, which has induced me to insert this note, though not greatly to the present purpose. (See more of the Anglo-Saxon guilds in Turner's history, vol. ii, p. 102.) Societies of the same kind, for purposes of religion, charity, or mutual assistance, rather than trade, may be found long afterward. (Blomefield's "Hist. of Norfolk," vol. iii, p. 494.)

[260] See a grant from Turstin, Archbishop of York, in the reign of Henry I, to the burgesses of Beverly, that they may have their hanshus (i. e., guildhall) like those of York, et ibi sua statuta pertractent ad honorem Dei, etc. (Rymer, tome i, p. 10, edit. 1816.)

[261] Madox, "Firma Burgi," p. 189.

[262] Idem, passim. A few of an earlier date may be found in the new edition of Rymer.

[263] Littleton's "History of Henry II," vol. ii, p. 170; Macpherson's "Annals of Commerce," vol. i, p. 331.

acquire importance at home. That vigorous prerogative of the Norman monarchs, which kept down the feudal aristocracy, compensated for whatever inferiority there might be in the population and defensible strength of the English towns, compared with those on the Continent. They had to fear no petty oppressors, no local hostility; and if they could satisfy the rapacity of the crown, were secure from all other grievances. London, far above the rest, our ancient and noble capital, might, even in those early times, be justly termed a member of the political system. This great city, so admirably situated, was rich and populous long before the conquest. Bede, at the beginning of the eighth century, speaks of London as a great market, which traders frequented by land and sea.[264] It paid fifteen thousand pounds out of eighty-two thousand pounds, raised by Canute upon the kingdom.[265] If we believe Roger Hoveden, the citizens of London, on the death of Ethelred II, joined with part of the nobility in raising Edmund Ironside to the throne.[266] Harold I, according to better authority, the "Saxon Chronicle" and William of Malmsbury, was elected by their concurrence.[267] Descending to later history, we find them active in the civil war of Stephen and Matilda. The famous Bishop of Winchester tells the Londoners that they are almost accounted as noblemen on account of the greatness of their city, into the community of which it appears that some barons had been received.[268] Indeed, the citizens themselves, or at least the principal of them, were called barons. It was certainly by far the greatest city in England. There have been different estimates of its population, some of which are

[264] Macpherson, p. 245.

[265] Id., p. 282.

[266] Cives Lundinenses, et pars nobilium qui eo tempore consistebant Lundoniæ, Clitonem Eadmundum unanimi consensu in regem levavere (p. 249).

[267] "Chron. Saxon.," p. 154; Malmsbury, p. 76. He says the people of London were become almost barbarians through their intercourse with the Danes; propter frequentem convictum.

[268] Londinenses, qui sunt quasi optimates pro magnitudine civitatis in Angliâ. (Malmsb., p. 189.) Thus, too, Matthew Paris: cives Londinenses, quos propter civitatis dignitatem et civium antiquam libertatem Barones consuevimus appellare (p. 744). And in another place: totius civitatis cives, quos barones vocant (p. 835). Spelman says that the magistrates of several other towns were called barons. (Glossary, "Barones de London.")

A singular proof of the estimation in which the citizens of London held themselves in the reign of Richard I occurs in the "Chronicle of Jocelyn de Brakelonde" (p. 56—Camden Society, 1840). They claimed to be free from toll in every part of England, and in every jurisdiction, resting their immunity on the antiquity of London (which was coeval, they said, with Rome), and on its rank as metropolis of the kingdom. Et dicebant cives Lundonienses fuisse quietos de theloneo in omni foro, et semper et ubique, per totam Angliam, à tempore quo Roma primo fundata fuit, et civitatem Lundoniæ, eodem tempore fundatam, talem debere habere libertatem per totam Angliam, et ratione civitatis privilegiatæ quæ olim metropolis fuit et caput regni, et ratione antiquitatis. Palgrave inclines to think that London never formed part of any kingdom of the Heptarchy. (Introduction to "Rot. Cur. Regis.," p. 95.) But this seems to imply a republican city in the midst of so many royal states, which seems hardly probable. Certainly it seems strange, though I can not explain it away, that the capital of England should have fallen, as we generally suppose, to the small and obscure kingdom of Essex. Winchester, indeed, may be considered as having become afterward the capital during the Anglo-Saxon monarchy, so far as that it was for the most part the residence of our kings. But London was always more populous.

extravagant; but I think it could hardly have contained less than thirty or forty thousand souls within its walls, and the suburbs were very populous.[269] These numbers, the enjoyment of privileges, and the consciousness of strength, infused a free and even a mutinous spirit into their conduct.[270] The Londoners were always on the barons' side in their contests with the crown. They bore a part in deposing William Longchamp, the chancellor and justiciary of Richard I.[271] They were distinguished in the great struggle for Magna Charta; the privileges of their city are expressly confirmed in it; and the Mayor of London was one of the twenty-five barons to whom the maintenance of its provisions was delegated. In the subsequent reign the citizens of London were regarded with much dislike and jealousy by the court, and sometimes suffered pretty severely at its hands, especially after the battle of Evesham.[272]

Notwithstanding the influence of London in these seasons of disturbance, we do not perceive that it was distinguished from the most insignificant town by greater participation in national councils. Rich, powerful, honourable, and high-spirited as its citizens had become, it was very long before they found a regular place in Parliament. The prerogative of imposing tallages at pleasure, unsparingly exercised by Henry III even over London,[273] left the crown no inducement to summon the inhabitants

[269] Drake, the historian of York, maintains that London was less populous, about the time of the conquest, than that city; and quotes Hardynge, a writer of Henry V's age, to prove that the interior part of the former was not closely built. ("Eboracum," p. 91.) York, however, does not appear to have contained more than 10,000 inhabitants at the accession of the Conqueror; and the very exaggerations as to the populousness of London prove that it must have far exceeded that number. Fitz-Stephen, the contemporary biographer of Thomas à Becket, tells us of 80,000 men capable of bearing arms within its precincts; where, however, his translator, Pegge, suspects a mistake of the manuscript in the numerals. And this, with similar hyperboles, so imposed on the judicious mind of Lord Littleton that, finding in Peter of Blois the inhabitants of London reckoned at quadraginta millia, he has actually proposed to read quadringenta. ("Hist. Henry II," vol. iv. ad finem.) It is hardly necessary to observe that the condition of agriculture and internal communication would not have allowed half that number to subsist.

The subsidy roll of 1377, published in the "Archæologia," vol. vii. would lead to a conclusion that all the inhabitants of London did not even then exceed 35,000. If this be true, they could not have amounted, probably, to 40 great a number two or three centuries earlier. But the numbers given in that document have been questioned as to Norwich upon very plausible grounds, and seem rather suspicious in the present instance. [Note V.]

[270] This seditious, or at least refractory, character of the Londoners was displayed in the tumult headed by William Longbeard in the time of Richard I, and that under Constantine in 1222, the patriarchs of a long line of city demagogues. (Hoveden, p. 765; M. Paris, p. 154.)

[271] Hoveden's expressions are very precise, and show that the share taken by the citizens of London (probably the mayor and aldermen) in this measure was no tumultuary acclamation, but a deliberate concurrence with the nobility. Comes Johannes, et fere omnes episcopi, et comites Angliæ eâdem die intraverunt Londonias; et in crastino prædictus Johannes frater regis, et archiepiscopus Rothomagensis, et omnes episcopi, et comites et barones, et cives Londonienses cum illis convenerunt in atrio ecclesiæ S. Pauli. . . . Placuit ergo Johanni fratri regis, et omnibus episcopis, et comitibus et baronibus regni, et civibus Londoniarum, quod cancellarius ille deponeretur, et deposuerunt eum, etc. (p. 701).

[272] The reader may consult, for a more full account of the English towns before the middle of the thirteenth century, Littleton's "History of Henry II," vol. ii, p. 174, and Macpherson's "Annals of Commerce."

[273] Frequent proofs of this may be found in Madox, "Hist. of Exchequer,"

of cities and boroughs. As these, indeed, were daily growing more considerable, they were certain, in a monarchy so limited as that of England became in the thirteenth century, of attaining, sooner or later, this eminent privilege. Although, therefore, the object of Simon de Montfort in calling them to his Parliament after the battle of Lewes was merely to strengthen his own faction, which prevailed among the commonalty, yet their permanent admission into the legislature may be ascribed to a more general cause. For otherwise it is not easy to see why the innovation of a usurper should have been drawn into precedent, though it might perhaps accelerate what the course of affairs was gradually preparing.

It is well known that the earliest writs of summons to cities and boroughs, of which we can prove the existence, are those of Simon de Montfort, Earl of Leicester, bearing date 12th of December, 1264, in the forty-ninth year of Henry III.[274] After a long controversy, almost all judicious inquirers seem to have acquiesced in admitting this origin of popular representation.[275] The argument may be very concisely stated. We find from innumerable records that the king imposed tallages upon his demesne towns at discretion.[276] No public instrument previous to the forty-ninth of Henry III names the citizens and burgesses as constituent parts of Parliament; though prelates, barons, knights, and sometimes freeholders are enumerated,[277] while, since the undoubted admission of the commons, they are almost invariably mentioned. No historian speaks of representatives appearing for the people, or uses the word citizen or burgess in

c. 17, as well as in Matt. Paris, who laments it with indignation. Cives Londinenses, contra consuetudinem et libertatem civitatis, quasi servi ultimæ conditionis, non sub nomine aut titulo liberi adjutorii, sed tallagii, quod multum eos angebat, regi, licet inviti et renitentes, nume rare sunt coacti (p. 492). Heu ubi est Londinensis, toties empta, toties concessa, toties scripta, toties jurata libertas! etc. (p. 627). The king sometimes suspended their market—that is, I suppose, their right of toll—till his demands were paid.

[274] These writs are not extant, having perhaps never been returned, and consequently we can not tell to what particular places they were addressed. It appears, however, that the assembly was intended to be numerous, for the entry runs: scribitur civibus Ebor, civibus Lincoln, et cæteris burgis Angliæ. It is singular that no mention is made of London, which must have had some special summons. (Rymer, tome i, p. 803; Dugdale, "Summonitiones ad Parliamentum," p. 1.)

[275] It would ill repay any reader's diligence to wade through the vapid and diluted pages of Tyrrell; but whoever would know what can be best pleaded for a higher antiquity of our present parliamentary constitution may have recourse to Hody on "Convocations," and Lord Littleton's "History of Henry II," vol. ii, p. 276, and vol. iv, pp. 79–106. I do not conceive it possible to argue the question more ingeniously than has been done by the noble writer last quoted. Whitelocke, in his commentary on the parliamentary writ, has treated it very much at length, but with no critical discrimination.

[276] Madox, "Hist. of Exchequer," c. 17.

[277] The only apparent exception to this is in the letter addressed to the Pope by the Parliament of 1246, the salutation of which runs thus: Barones, proceres, et magnates, ac nobiles portuum maris habitatores, necnon et clerus et populus universus, salutem. (Matt. Paris, p. 696.) It is plain, I think, from these words, that some of the chief inhabitants of the Cinque Ports, at that time very flourishing towns, were present in this Parliament. But whether they sat as representatives, or by a peculiar writ of summons, is not so evident; and the latter may be the more probable hypothesis of the two.

describing those present in Parliament. Such convincing, though negative, evidence is not to be invalidated by some general and ambiguous phrases, whether in writs and records or in historians.[278] Those monkish annalists are poor authorities upon any point where their language is to be delicately measured. But it is hardly possible that, writing circumstantially, as Roger de Hoveden and Matthew Paris sometimes did, concerning proceedings in Parliament, they could have failed to mention the commons in unequivocal expressions if any representatives from that order had actually formed a part of the assembly.

Two authorities, however, which had been supposed to prove a greater antiquity than we have assigned to the representation of the commons, are deserving of particular consideration—the cases of St. Albans and Barnstaple. The burgesses of St. Albans complained to the council in the eighth year of Edward II that, although they held of the king in capite, and ought to attend his Parliaments whenever they are summoned, by two of their number, instead of all other services, as had been their custom in all past times, which services the said burgesses and their predecessors had performed as well in the time of the late King Edward and his ancestors as in that of the present king until the Parliament now sitting, the names of their deputies having been constantly enrolled in chancery, yet the sheriff of Hertfordshire, at the instigation of the Abbot of St. Albans, had neglected to cause an election and return to be made, and prayed remedy. To this petition it was answered: "Let the rolls of chancery be examined, that it may appear whether the said burgesses were accustomed to come to Parliament or not in the time of the king's ancestors, and let right be done to them, vocatis evocandis, si necesse fuerit." I do not translate these words, concerning the sense of which there has been some dispute, though not, apparently, very material to the principal subject.[279]

This is, in my opinion, by far the most plausible testimony for the early representation of boroughs. The burgesses of St. Albans claim a prescriptive right from the usage of all past times, and more especially those of the late Edward and his ancestors. Could this be alleged, it has been said, of a privilege at the utmost of fifty years' standing, once granted by a usurper, in the days of the late king's father, and afterward discontinued till about twenty years before the date of their petition, according to those who refer the regular appearance of the commons in Parliament to the twenty-third of Edward I? Brady, who obviously felt the strength of this authority, has shown little of his usual ardour

[278] Thus Matthew Paris tells us that in 1237 the whole kingdom, regni totius universitas, repaired to a Parliament of Henry III (p. 367).

[279] Brady's "Introduction to Hist. of England," p. 38.

and acuteness in repelling it. It was observed, however, by Madox, that the petition of St. Albans contains two very singular allegations: it asserts that the town was part of the king's demesne, whereas it had invariably belonged to the adjoining abbey; and that its burgesses held by the tenure of attending Parliament, instead of all other services, contrary to all analogy, and without parallel in the condition of any tenant in capite throughout the kingdom. "It is no wonder, therefore," says Hume, "that a petition which advances two falsehoods should contain one historical mistake, which indeed amounts only to an inaccurate expression." But it must be confessed that we can not so easily set aside the whole authority of this record. For whatever assurance the people of St. Albans might show in asserting what was untrue, the king's council must have been aware how recently the deputies of any towns had been admitted into Parliament. If the lawful birth of the House of Commons were in 1295, as is maintained by Brady and his disciples, is it conceivable that, in 1315, the council would have received a petition, claiming the elective franchise by prescription, and have referred to the rolls of chancery to inquire whether this had been used in the days of the king's progenitors? I confess that I see no answer which can easily be given to this objection by such as adopt the latest epoch of borough representation—namely, the Parliament of 23 Edward I. But they are by no means equally conclusive against the supposition that the communities of cities and towns, having been first introduced into the legislature during Leicester's usurpation, in the forty-ninth year of Henry III, were summoned, not perhaps uniformly, but without any long intermission, to succeeding Parliaments. There is a strong presumption, from the language of a contemporary historian, that they sat in the Parliament of 1269, four years after that convened by Leicester.[280] It is more unequivocally stated by another annalist that they were present in the first Parliament of Edward I held in 1271.[281] Nor does a similar inference want some degree of support from the preambles of the statute of Marlebridge in 51 Henry III, of Westminster I in the third, and of Gloucester in the sixth, year of Edward I.[282] And the writs are extant which

[280] Convocatis universis Angliæ prelatis et magnatibus, necnon cunctatum regni sui civitatum et burgorum potentioribus. (Wykes, in Gale, XV Scriptores, tome ii, p. 88.) I am indebted to Hody on "Convocations" for this reference, which seems to have escaped most of our constitutional writers.

[281] Hoc anno . . . convenerunt archiepiscopi, episcopi, comites et barones, abbates et priores, et de quolibet comitatu quatuor milites, et de quâlibet civitate quatuor. ("Annales Waverleienses," in Gale, tome ii, p. 227.) I was led to this passage by Atterbury, "Rights of Convocations," p. 310, where some other authorities less unquestionable are adduced for the same purpose. Both this assembly and that mentioned by Wykes in 1269 were certainly Parliaments, and acted as such, particularly the former, though summoned for purposes not strictly parliamentary.

[282] The statute of Marlebridge is said to be made convocatis discretioribus, tam majoribus quàm minoribus; that of Westminster primer, par son conseil, et par l'assentements des archievesques,

summon every city, borough, and market town to send two deputies to a council in the eleventh year of his reign. I call this a council, for it undoubtedly was not a Parliament. The sheriffs were directed to summon personally all who held more than twenty pounds a year of the crown, as well as four knights for each county invested with full powers to act for the commons thereof. The knights and burgesses thus chosen, as well as the clergy within the province of Canterbury, met at Northampton; those within the province of York, at that city. And neither assembly was opened by the king.[283] This anomalous convention was nevertheless one means of establishing the representative system, and, to an inquirer free from technical prejudice, is little less important than a regular Parliament. Nor have we long to look even for this. In the same year, about eight months after the councils at Northampton and York, writs were issued summoning to a Parliament at Shrewsbury two citizens from London, and as many from each of twenty other considerable towns.[284] It is a slight cavil to object that these were not directed as usual to the sheriff of each county, but to the magistrates of each place. Though a very imperfect, this was a regular and unequivocal representation of the commons in Parliament. But

evesques, abbes, priors, countes, barons, et tout le comminality de la terre illonques summones. The statute of Gloucester runs, appelles les plus discretes de son royaume, auxibien des grandes come des meinders. These preambles seem to have satisfied Mr. Prynne that the commons were then represented, though the writs are wanting; and certainly no one could be less disposed to exaggerate their antiquity. ("Second Register," p. 30.)

[283] Brady's "Hist. of England," vol. ii, appendix; Carte, vol. ii, p. 247.

[284] This is commonly denominated the Parliament of Acton Burnell; the clergy and commons having sat in that town, while the barons passed judgment upon David, Prince of Wales, at Shrewsbury. The towns which were honoured with the privilege of representation, and may consequently be supposed to have been at that time the most considerable in England, were York, Carlisle, Scarborough, Nottingham, Grimsby, Lincoln, Northampton, Lynn, Yarmouth, Colchester, Norwich, Chester, Shrewsbury, Worcester, Hereford, Bristol, Canterbury, Winchester, and Exeter. (Rymer, tome ii, p. 247.)

"This [the trial and judgment of Llewellin] seems to have been the only business transacted at Shrewsbury; for the bishops and abbots, and four knights of each shire, and two representatives of London and nineteen other trading towns, summoned to meet the same day in Parliament, are said to have sat at Acton Burnell; and thence the law made for the more easy recovery of the debts of merchants is called the Statute of Acton Burnell. It was probably made at the request of the representatives of the cities and boroughs present in that Parliament, authentic copies in the king's name being sent to seven of those trading towns; but it runs only in the name of the king and his council." (Carte, ii, 195, referring to Rot. Wall., 11 Edward I, m. 2d.)

As the Parliament was summoned to meet at Shrewsbury, it may be presumed that the commons adjourned to Acton Burnell. The word "statute" implies that some consent was given, though the enactment came from the king and council. It is entitled in the "Book of the Exchequer," des Estatus de Slopbury ke sunt appele Actone Burnel. Ces sunt les Estatus fez at Salopsebur, al Parlement prochein apres la fete Seint Michel, l'an del reigne le Rey Edward, Fitz le Rey Henry, unzime. ("Report of Lords' Committee," p. 191.) The enactment by the king and council founded on the consent of the estates was at Acton Burnell. And the Statute of Merchants, 13 Edw. I, refers to that of the 11th, as made by the king, a son Parlement que il tint à Acton Burnell, and again mentions l'avant dit statut fait à Acton Burnel. This seems to afford a voucher for what is said in my text, which has been controverted by a learned antiquary.* It is certain that the lords were at Shrewsbury in their judicial character condemning Llewellin, but whether they proceeded afterward to Acton Burnell, and joined in the statute, is not quite so clear.

* "Archæological Journal," vol. ii, p. 337, by the Rev. W. Hartshorne.

their attendance seems to have intermitted from this time to the twenty-third year of Edward's reign.[285]

Those to whom the petition of St. Albans is not satisfactory will hardly yield their conviction to that of Barnstaple. This town set forth in the eighteenth of Edward III that, among other franchises granted to them by a charter of Athelstan, they had ever since exercised the right of sending two burgesses to Parliament. The said charter, indeed, was unfortunately mislaid; and the prayer of their petition was to obtain one of the like import in its stead. Barnstaple, it must be observed, was a town belonging to Lord Audley, and had actually returned members ever since the twenty-third of Edward I. Upon an inquisition directed by the king to be made into the truth of these allegations, it was found that "the burgesses of the said town were wont to send two burgesses to Parliament for the commonalty of the borough"; but nothing appeared as to the pretended charter of Athelstan, or the liberties which it was alleged to contain. The burgesses, dissatisfied with this inquest, prevailed that another should be taken, which certainly answered better their wishes. The second jury found that Barnstaple was a free borough from time immemorial; that the burgesses had enjoyed under a charter of Athelstan, which had been casually lost, certain franchises by them enumerated, and particularly that they should send two burgesses to Parliament; and that it would not be to the king's prejudice if he should grant them a fresh charter in terms equally ample with that of his predecessor, Athelstan. But the following year we have another writ and another inquest; the former reciting that the second return had been unduly and fraudulently made, and the latter expressly contradicting the previous inquest in many points, and especially finding no proof of Athelstan's supposed charter. Comparing the various parts of this business, we shall probably be induced to agree with Willis that it was but an attempt of the inhabitants of Barnstaple to withdraw themselves from the jurisdiction of their lord. For the right of returning burgesses, though it is the main point of our inquiries, was by no means the most prominent part of their petition, which rather went to establish some civil privileges of devising their tenements and electing their own mayor. The first and fairest return finds only that they were accustomed to send members to Parliament, which a usage of fifty years (from 23 Edward I to 18 Edward III) was fully sufficient to establish, without searching into more remote antiquity.[286]

It has, however, probably occurred to the reader of these two cases, St. Albans and Barnstaple, that the representation

[285] [Note VI.]
[286] Willis, "Notitia Parliamentaria," vol. ii, p. 312; Littleton's "Hist. of Hen. II," vol. iv, p. 89.

of the commons in Parliament was not treated as a novelty, even in times little posterior to those in which we have been supposing it to have originated. In this consists, I think, the sole strength of the opposite argument. An act in the fifth year of Richard II declares that, if any sheriff shall leave out of his returns any cities or boroughs which be bound and of old times were wont to come to the Parliament, he shall be punished as was accustomed to be done in the like case in time past.[287] In the memorable assertion of legislative right by the commons in the second of Henry V (which will be quoted hereafter) they affirm that "the commune of the land is, and ever has been, a member of Parliament."[288] And the consenting suffrage of our older law-books must be placed in the same scale. The first gainsayers, I think, were Camden and Sir Henry Spelman, who, upon probing the antiquities of our constitution somewhat more exactly than their predecessors, declared that they could find no signs of the commons in Parliament till the forty-ninth of Henry III. Prynne, some years afterward, with much vigour and learning, maintained the same argument, and Brady completed the victory. But the current doctrine of Westminster Hall, and still more of the two chambers of Parliament, was certainly much against these antiquaries; and it passed at one time for a surrender of popular principles, and almost a breach of privilege, to dispute the lineal descent of the House of Commons from the witenagemot.[289]

The true ground of these pretensions to antiquity was a very well-founded persuasion that no other argument would be so conclusive to ordinary minds, or cut short so effectually all encroachments of the prerogative. The populace of every country, but none so much as the English, easily grasp the notion of right, meaning thereby something positive and definite, while the maxims of expediency or theoretical reasoning pass slightly over their minds. Happy indeed for England that it is so! But we

[287] 5 Ric. II, stat. 2, c. iv.

[288] "Rot. Parl.," vol. iv, p. 22.

[289] Though such an argument would not be conclusive, it might afford some ground for hesitation if the royal burghs of Scotland were actually represented in their Parliament more than half a century before the date assigned to the first representation of English towns. Lord Hailes concludes from a passage in Fordun that "as early as 1211 burgesses gave suit and presence in the great council of the king's vassals, though the contrary has been asserted with much confidence by various authors." ("Annals of Scotland," vol. i, p. 139.) Fordun's words, however, so far from importing that they formed a member of the legislature, which perhaps Lord Hailes did not mean by the quaint expression "gave suit and presence," do not appear to me conclusive to prove that they were actually present. Hoc anno Rex Scotiæ Willelmus magnum tenuit consilium. Ubi, petito ab optimatibus auxilio, promiserunt se daturos decem mille marcas: præter burgenses regni, qui sex millia promiserunt. Those who know the brief and incorrect style of chronicles will not think it unlikely that the offer of 6,000 marks by the burgesses was not made in Parliament, but in consequence of separate requisitions from the crown. Pinkerton is of opinion that the magistrates of royal burghs might upon this, and perhaps other occasions, have attended at the bar of Parliament with their offers of money. But the deputies of towns do not appear as a part of Parliament till 1326. "Hist. of Scotland," vol. i, pp. 352, 371.)

have here to do with the fact alone. And it may be observed that several pious frauds were practised to exalt the antiquity of our constitutional liberties. These began, perhaps, very early, when the imaginary laws of Edward the Confessor were so earnestly demanded. They were carried further under Edward I and his successor, when the fable of privileges granted by the Conqueror to the men of Kent was devised; when Andrew Horn filled his "Mirror of Justices" with fictitious tales of Alfred; and, above all, when the "Method of holding Parliaments in the time of Ethelred" was fabricated, about the end of Richard II's reign—an imposture which was not too gross to deceive Sir Edward Coke.[290]

There is no great difficulty in answering the question why the deputies of boroughs were finally and permanently ingrafted upon Parliament by Edward I.[291] The government was becoming constantly more attentive to the wealth that commerce brought into the kingdom, and the towns were becoming more flourishing and more independent. But chiefly there was a much stronger spirit of general liberty and a greater discontent at violent acts of prerogative from the era of Magna Charta; after which authentic recognition of free principles many acts which had seemed before but the regular exercise of authority were looked upon as infringements of the subject's right. Among these, the custom of setting tallages at discretion would naturally appear the most intolerable; and men were unwilling to remember that the burgesses who paid them were indebted for the rest of their possessions to the bounty of the crown. In Edward I's reign, even before the great act of Confirmation of the Charters had rendered arbitrary impositions absolutely unconstitutional, they might perhaps excite louder murmurs than a discreet administration would risk. Though the necessities of the king, therefore, and his imperious temper often led him to this course,[292] it was a more prudent counsel to try the willingness of his people before he forced their reluctance. And the success of his innovation rendered it worth repetition. Whether it were from the complacency of the commons at being thus

[290] [Note VII.]

[291] These expressions can not appear too strong. But it is very remarkable that to the Parliament of 18 Edward III the writs appear to have summoned none of the towns, but only the counties. (Willis, "Notit. Parliament.," vol. i, preface, p. 13; Pyrnne's "Register," 3d part, p. 144.) Yet the citizens and burgesses are once, but only once, named as present in the parliamentary roll; and there is, in general, a chasm in place of their names where the different ranks present are enumerated. ("Rot. Parl.," vol. ii, p. 146.) A subsidy was granted at this Parliament; so that, if the citizens and burgesses were really not summoned, it is by far the most violent stretch of power during the reign of Edward III. But I know of no collateral evidence to illustrate or disprove it.

[292] Tallages were imposed without consent of Parliament in 17 Edward I. (Wykes, p. 117, and in 32 Edward I; Brady's "Hist. of Eng.," vol. ii.) In the latter instance the king also gave leave to the lay and spiritual nobility to set a tallage on their own tenants. This was subsequent to the Confirmatio Chartarum, and unquestionably illegal.

admitted among the peers of the realm, or from a persuasion that the king would take their money if they refused it, or from inability to withstand the plausible reasons of his ministers, or from the private influence to which the leaders of every popular assembly have been accessible, much more was granted in subsidies after the representation of the towns commenced than had ever been extorted in tallages.

To grant money was, therefore, the main object of their meeting; and if the exigencies of the administration could have been relieved without subsidies, the citizens and burgesses might still have sat at home and obeyed the laws which a council of prelates and barons enacted for their government. But it is a difficult question whether the king and the peers designed to make room for them, as it were, in legislation; and whether the power of the purse drew after it immediately, or only by degrees, those indispensable rights of consenting to laws which they now possess. There are no sufficient means of solving this doubt during the reign of Edward I. The writ in 22 Edward I directs two knights to be chosen cum plenâ potestate pro se et totâ communitate comitatûs prædicti ad consulendum et consentiendum pro se et communitate illâ, his quæ comites, barones, et proceres prædicti concorditer ordinaverint in præmissis. That of the next year runs, ad faciendum tunc quod de communi consilio ordinabitur in præmissis. The same words are inserted in the writ of 26 Edward I. In that of 28 Edward I the knights are directed to be sent cum plenâ potestate audiendi et faciendi quæ ibidem ordinari contigerint pro communi commodo. Several others of the same reign have the words ad faciendum. The difficulty is to pronounce whether this term is to be interpreted in the sense of performing or of enacting; whether the representatives of the commons were merely to learn from the lords what was to be done, or to bear their part in advising upon it. The earliest writ, that of 22 Edward I, certainly implies the latter, and I do not know that any of the rest are conclusive to the contrary. In the reign of Edward II the words ad consentiendum alone, or ad faciendum et consentiendum, begin; and from that of Edward III this form has been constantly used.[293] It must still, however, be highly questionable whether the commons, who had so recently taken their place in Parliament, gave anything more than a constructive assent to the laws enacted during this reign. They are not even named in the preamble of any statute till the last year of Edward I. Upon more than one occasion the sheriffs were directed to return the same members who had

[293] Prynne's "Second Register." It may be remarked that writs of summons to great councils never ran ad faciendum, but ad tractandum, consulendum et consentiendum; from which some would infer that faciendum had the sense of enacting; since statutes could not be passed in such assemblies. (Id., p. 92.)

sat in the last Parliament, unless prevented by death or infirmity.[294]

It has been a very prevailing opinion that Parliament was not divided into two houses at the first admission of the commons. If by this is only meant that the commons did not occupy a separate chamber till some time in the reign of Edward III, the proposition, true or false, will be of little importance. They may have sat at the bottom of Westminster Hall, while the lords occupied the upper end. But that they were ever intermingled in voting appears inconsistent with likelihood and authority. The usual object of calling a Parliament was to impose taxes; and these for many years after the introduction of the commons were laid in different proportions upon the three estates of the realm. Thus in the 23 Edward I the earls, barons, and knights gave the king an eleventh, the clergy a tenth, while he obtained a seventh from the citizens and burgesses; in the twenty-fourth of the same king the two former of these orders gave a twelfth, the last an eighth; in the thirty-third year a thirtieth was the grant of the barons and knights and of the clergy, a twentieth of the cities and towns; in the first of Edward II the counties paid a twentieth, the towns a fifteenth; in the sixth of Edward III the rates were a fifteenth and a tenth.[295] These distinct grants imply distinct grantors; for it is not to be imagined that the commons intermeddled in those affecting the lords, or the lords in those of the commons. In fact, however, there is abundant proof of their separate existence long before the seventeenth of Edward III, which is the epoch assigned by Carte,[296] or even the sixth of that king, which has been chosen by some other writers. Thus the commons sat at Acton Burnell in the eleventh of Edward I, while the upper house was at Shrewsbury. In the eighth of Edward II "the commons of England complain to the king and his council," etc.[297] These must surely have been the commons assembled in Parliament, for who else could thus have entitled themselves? In the nineteenth of the same king we find several petitions, evidently proceeding from the body of the commons in Parliament, and complaining of public grievances.[298] The roll of 1 Edward III, though mutilated, is conclusive to show that separate petitions were then presented by the commons, according to the regular usage of subsequent times.[299] And indeed the preamble of 1 Edward III, stat. 2, is apparently capable of no other inference.

As the knights of the shires correspond to the lower nobility of other feudal countries, we have less cause to be surprised that

[294] 28 E. I, in Prynne's "Fourth Register," p. 12; 9 E. II (a great council), p. 48.

[295] Brady's "Hist. of England," vol. ii, p. 40; "Parliamentary History," vol. i, p. 206; "Rot. Parl.," tome ii, p. 66.

[296] Carte, vol. ii, p. 451; "Parliamentary History," vol. i, p. 234.

[297] "Rot. Parl.," vol. i, p. 289.

[298] Id., p. 430.

[299] Id., vol. ii, p. 7.

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they belonged originally to the same branch of Parliament as the barons than at their subsequent intermixture with men so inferior in station as the citizens and burgesses. It is by no means easy to define the point of time when this distribution was settled; but I think it may be inferred from the rolls of Parliament that the houses were divided as they are at present in the eighth, ninth, and nineteenth years of Edward II.[300] This appears, however, beyond doubt in the first of Edward III.[301] Yet in the sixth of the same prince, though the knights and burgesses are expressly mentioned to have consulted together, the former taxed themselves in a smaller rate of subsidy than the latter.[302]

The proper business of the House of Commons was to petition for redress of grievances, as much as to provide for the necessities of the crown. In the prudent fiction of English law no wrong is supposed to proceed from the source of right. The throne is fixed upon a pinnacle, which perpetual beams of truth and justice irradiate, though corruption and partiality may occupy the middle region and cast their chill shade upon all below. In his high court of Parliament a King of England was to learn where injustice had been unpunished and where right had been delayed. The common courts of law, if they were sufficiently honest, were not sufficiently strong, to redress the subject's injuries where the officers of the crown or the nobles interfered. To Parliament he looked as the great remedial court for relief of private as well as public grievances. For this cause it was ordained in the fifth of Edward II that the king should hold a Parliament once, or, if necessary, twice every year; "that the pleas which have been thus delayed, and those where the justices have differed, may be brought to a close."[303] And a short act of 4 Edward III, which was not very strictly regarded, provides that a Parliament shall be held "every year, or oftener, if need be."[304] By what persons, and under what limitations, this jurisdiction in Parliament was exercised will come under our future consideration.

[300] "Rot. Parl.," vol. ii, pp. 289, 351, 430.
[301] Id., p. 5.
[302] Id., p. 86.
[303] Id., vol. i, p. 285.
[304] 4 E. III, c. 14. Annual sessions of Parliament seem fully to satisfy the words, and still more the spirit, of this act, and of 36 E. III, c. 10; which, however, are repealed by implication from the provisions of 6 Will. III, c. 2. But it was very rare under the Plantagenet dynasty for a Parliament to continue more than a year.

It has been observed that this provision "had probably in view the administration of justice by the king's court in Parliament." ("Report of Lords' Committee," p. 301.) And in another place: "It is clear that the word Parliament in the reign of Edward I was not used only to describe a legislative assembly, but was the common appellation of the ordinary assembly of the king's great court or council; and that the legislative assembly of the realm, composed generally, in and after the 23d of Edward I, of lords spiritual and temporal, and representatives of the commons, was usually convened to meet the king's council in one of these Parliaments" (p. 171).

Certainly the commons could not desire to have an annual Parliament in order to make new statutes, much less

The efficacy of a king's personal character in so imperfect a state of government was never more strongly exemplified than in the first two Edwards. The father, a little before his death, had humbled his boldest opponents among the nobility; and as for the commons, so far from claiming a right of remonstrating, we have seen cause to doubt whether they were accounted effectual members of the legislature for any purposes but taxation. But in the very second year of the son's reign they granted the twenty-fifth penny of their goods, "upon this condition, that the king should take advice and grant redress upon certain articles wherein they are aggrieved." These were answered at the ensuing Parliament, and are entered with the king's respective promises of redress upon the roll. It will be worth while to extract part of this record, that we may see what were the complaints of the commons of England, and their notions of right, in 1309. I have chosen on this as on other occasions to translate very literally, at the expense of some stiffness, and perhaps obscurity, in language:

"The good people of the kingdom who are come hither to Parliament pray our lord the king that he will, if it please him, have regard to his poor subjects, who are much aggrieved by reason that they are not governed as they should be, especially as to the articles of the Great Charter; and for this, if it please him, they pray remedy. Besides which, they pray their lord the king to hear what has long aggrieved his people, and still does so from day to day, on the part of those who call themselves his officers, and to amend it, if he pleases." The articles, eleven in number, are to the following purport: 1. That the king's purveyors seize great quantities of victuals without payment. 2. That new customs are set on wine, cloth, and other imports. 3. That the current coin is not so good as formerly.[305] 4, 5. That the steward and marshal enlarge their jurisdiction beyond measure, to the oppression of the people. 6. That the commons find none to receive petitions addressed to the council. 7. That the collectors of the king's dues (pernours des prises) in towns and at fairs take more than is lawful. 8. That men are delayed in their civil suits by writs of protection. 9. That felons escape

to grant subsidies. It was, however, important to present their petitions, and to set forth their grievances to this high court. We may easily reconcile the anxiety so often expressed by the commons to have frequent sessions of Parliament with the individual reluctance of members to attend. A few active men procured these petitions, which the majority could not with decency oppose, since the public benefit was generally admitted. But when the writs came down, every pretext was commonly made use of to avoid a troublesome and ill-remunerated journey to Westminster. For the subject of annual Parliaments, see a valuable article by Allen in the twenty-eighth volume of the "Edinburgh Review."

[305] This article is so expressed as to make it appear that the grievance was the high price of commodities. But as this was the natural effect of a degraded currency, and the whole tenor of these articles relates to abuses of government, I think it must have meant what I have said in the text.

punishment by procuring charters of pardon. 10. That the constables of the king's castles take cognizance of common pleas. 11. That the king's escheators oust men of lands held by good title, under pretence of an inquest of office.[306]

These articles display in a short compass the nature of those grievances which existed under almost all the princes of the Plantagenet dynasty, and are spread over the rolls of Parliament for more than a century after this time. Edward gave the amplest assurances of putting an end to them all, except in one instance, the augmented customs on imports, to which he answered, rather evasively, that he would take them off till he should perceive whether himself and his people derived advantage from so doing, and act thereupon as he should be advised. Accordingly, the next year, he issued writs to collect these new customs again. But the Lords Ordainers superseded the writs, having entirely abrogated all illegal impositions.[307] It does not appear, however, that, regard had to the times, there was anything very tyrannical in Edward's government. He set tallages sometimes, like his father, on his demesne towns, without assent of Parliament.[308] In the nineteenth year of his reign the commons show that, "whereas we and our ancestors have given many tallages to the king's ancestors to obtain the charter of the forest, which charter we have had confirmed by the present king, paying him largely on our part; yet the king's officers of the forest seize on lands, and destroy ditches, and oppress the people, for which they pray remedy, for the sake of God and his father's soul." They complain at the same time of arbitrary imprisonment, against the law of the land.[309] To both these petitions the king returned a promise of redress, and they complete the catalogue of customary grievances in this period of our constitution.

During the reign of Edward II the rolls of Parliament are imperfect, and we have not much assistance from other sources. The assent of the commons, which frequently is not specified in the statutes of this age,[310] appears in a remarkable and revolutionary proceeding, the appointment of the Lords Ordainers in 1312.[311] In this case it indicates that the aristocratic party then combined against the crown were desirous of conciliating popularity. A historian relates that some of the commons were consulted upon the ordinances to be made for the reformation of government.[312]

[306] Prynne's "Second Register," p. 68.
[307] Id., p. 75.
[308] Madox, "Firma Burgi," p. 6; "Rot. Parl.," vol. i, p. 449.
[309] "Rot. Parl.," vol. i, p. 430.
[310] It is, however, distinctly specified in stat. 7 Edw. II and in 12 Edw. II, and equivalent words are found in other statutes. Though often wanting, the testimony to the constitution of Parliament is sufficient and conclusive.
[311] "Rot. Parl.," vol. i, p. 281.
[312] Walsingham, p. 97. The Lords' Committee "have found no evidence of any writ issued for election of knights, citizens, and burgesses to attend the same meetings; from the subsequent documents it seems probable that none were

During the long and prosperous reign of Edward III the efforts of Parliament in behalf of their country were rewarded with success in establishing upon a firm footing three essential principles of our government—the illegality of raising money without consent; the necessity that the two houses should concur for any alterations in the law; and, lastly, the right of the commons to inquire into public abuses, and to impeach public counsellors. By exhibiting proofs of each of these from parliamentary records, I shall be able to substantiate the progressive improvement of our free constitution, which was principally consolidated during the reigns of Edward III and his next two successors. Brady, indeed, Carte, and the authors of the "Parliamentary History," have trod already over this ground; but none of the three can be considered as familiar to the generality of readers, and I may at least take credit for a sincerer love of liberty than any of their writings display.

In the sixth year of Edward III a Parliament was called to provide for the emergency of an Irish rebellion, wherein, "because the king could not send troops and money to Ireland without the aid of his people, the prelates, earls, barons, and other great men, and the knights of shires, and all the commons, of their free will, for the said purpose, and also in order that the king might live of his own, and not vex his people by excessive prizes, nor in other manner, grant to him the fifteenth penny, to levy of the commons,[313] and the tenth from the cities, towns, and royal demesnes. And the king, at the request of the same, in ease of his people, grants that the commissions lately made to certain persons assigned to set tallages on cities, towns, and demesnes throughout England shall be immediately repealed; and that in time to come he will not set such tallage, except as it has been done in the time of his ancestors, and as he may reasonably do." [314]

issued, and that the Parliament which assembled at Westminster consisted only of prelates, earls, and barons" (p. 259). We have no record of this Parliament; but in that of 5 Edw. II it is recited: Come le seizieme jour de Marz l'an de notre regne tierce, a l'honeur de Dieu et pour le bien de nous et de nostre roiaume, eussions granté de notre franche volonté, par nos lettres ouverts aux prelatz, countes, et barons, et communes de dit roiaume, qu'ils puissent eslire certain persones des prelatz, comtes, et barons, etc. ("Rot. Parl.," i, 281.) The inference, therefore, of the committee seems erroneous. [Note VIII.]

[313] "La commonaltée" seems in this place to mean the tenants of land, or commons of the counties, in contradistinction to citizens and burgesses.

[314] "Rot. Parl.," vol. ii, p. 66. The Lords' Committee observe on this passage in the roll of Parliament that "the king's right to tallage his cities, boroughs, and demesnes seems not to have been questioned by the Parliament, though the commissions for setting the tallage were objected to" (p. 305). But how can we believe that after the representatives of these cities and boroughs had sat, at least at times, for two reigns, and after the explicit renunciation of all right of tallage by Edward I (for it was never pretended that the king could lay a tallage on any towns which did not hold of himself), there could have been a Parliament which "did not question" the legality of a tallage set without their consent? The silence of the rolls of Parliament would furnish but a poor argument. But, in fact, their language is expressive enough. The several ranks of lords and commons grant the fifteenth penny from the commonalty,

These concluding words are of dangerous implication; and certainly it was not the intention of Edward, inferior to none of his predecessors in the love of power, to divest himself of that eminent prerogative which, however illegally since the Confirmatio Chartarum, had been exercised by them all. But the Parliament took no notice of this reservation, and continued with unshaken perseverance to insist on this incontestable and fundamental right, which he was prone enough to violate.

In the thirteenth year of this reign the lords gave their answer to commissioners sent to open the Parliament, and to treat with them on the king's part, in a sealed roll. This contained a grant of the tenth sheaf, fleece, and lamb. But before they gave it they took care to have letters-patent showed them, by which the commissioners had power "to grant some graces to the great and small of the kingdom." "And the said lords," the roll proceeds to say, "will that the imposition (maletoste) which now again has been levied upon wool be entirely abolished, that the old customary duty be kept, and that they may have it by charter, and by enrolment in Parliament, that such custom be never more levied, and that this grant now made to the king, or any other made in time past, shall not turn hereafter to their charge, nor be drawn into precedent." The commons, who gave their answer in a separate roll, declared that they could grant no subsidy without consulting their constituents; and therefore begged that another Parliament might be summoned, and in the meantime they would endeavour, by using persuasion with the people of their respective counties, to procure the grant of a reasonable aid in the next Parliament.[315] They demanded also that the imposition on wool and lead should be taken as it used to be in former times, "inasmuch as it is enhanced without assent of the commons, or of the lords, as we understand; and if it be otherwise demanded, that any one of the commons may refuse it (le puisse arester), without being troubled on that account (saunz estre chalangé)."[316]

Wool, however, the staple export of that age, was too easy and tempting a prey to be relinquished by a prince engaged in an impoverishing war. Seven years afterward, in 20 Edward III, we find the commons praying that the great subsidy of forty shillings upon the sack of wool be taken off, and the old custom paid as heretofore was assented to and granted. The government spoke

and the tenth from the cities, boroughs, and demesnes of the king, that "our lord the king may live of his own, and pay for his expenses, and not aggrieve his people by excessive (outraiouses) prizes, or otherwise." And upon this the king revokes the commission in the words of the text. Can anything be clearer than that the Parliament, though in a much gentler tone than they came afterward to assume, intimate the illegality of the late tallage? As to any other objection to the commissions, which the committee suppose to have been taken, nothing appears on the roll.

[315] "Rot. Parl.," vol. ii, p. 104.

[316] Id.

this time in a more authoritative tone. "As to this point," the answer runs, "the prelates and others, seeing in what need the king stood of an aid before his passage beyond sea, to recover his rights and defend his kingdom of England, consented, with the concurrence of the merchants, that he should have in aid of his said war, and in defence of his said kingdom, forty shillings of subsidy for each sack of wool that should be exported beyond sea for two years to come. And upon this grant divers merchants have made many advances to our lord the king in aid of his war; for which cause this subsidy can not be repealed without assent of the king and his lords." [317]

It is probable that Edward's counsellors wished to establish a distinction, long afterward revived by those of James I, between customs levied on merchandise at the ports and internal taxes. The statute entitled Confirmatio Chartarum had manifestly taken away the prerogative of imposing the latter, which, indeed, had never extended beyond the tenants of the royal demesne. But its language was not quite so explicit as to the former, although no reasonable doubt could be entertained that the intention of the legislature was to abrogate every species of imposition unauthorized by Parliament. The thirtieth section of Magna Charta had provided that foreign merchants should be free from all tributes, except the ancient customs; and it was strange to suppose that natives were excluded from the benefits of that enactment. Yet, owing to the ambiguous and elliptical style so frequent in our older laws, this was open to dispute, and could, perhaps, only be explained by usage. Edward I, in despite of both these statutes, had set a duty of threepence in the pound upon goods imported by merchant strangers. This imposition was noticed as a grievance in the third year of his successor, and repealed by the Lords Ordainers. It was revived, however, by Edward III, and continued to be levied ever afterward.[318]

Edward was led by the necessities of his unjust and expensive war into another arbitrary encroachment, of which we find as many complaints as of his pecuniary extortions. The commons pray, in the same Parliament of 20 Edward III, that commissions should not issue for the future out of chancery to charge the people with providing men-at-arms, hobelers (or light cavalry), archers, victuals, or in any other manner, without consent of Parliament. It is replied to this petition that "it is notorious how in many Parliaments the lords and commons had promised

[317] Id., p. 161.

[318] Case of impositions in Howell's "State Trials," vol. ii, pp. 371–519; particularly the arguments of Mr. Hakewill. Hale's "Treatise" on the customs, in Hargrave's "Tracts," vol. i.

Edward III imposed another duty on cloth exported, on the pretence that, as the wool must have paid a tax, he had a right to place the wrought and unwrought article on an equality. The commons remonstrated against this; but it was not repealed. This took place about 22 E. II. (Hale's "Treatise," p. 175.)

to aid the king in his quarrel with their bodies and goods as far as was in their power; wherefore the said lords, seeing the necessity in which the king stood of having aid of men-at-arms, hobelers, and archers before his passage to recover his rights beyond sea, and to defend his realm of England, ordained that such as had five pounds a year, or more, in land on this side of Trent should furnish men-at-arms, hobelers, and archers, according to the proportion of the land they held, to attend the king at his cost; and some who would neither go themselves nor find others in their stead were willing to give the king wherewithal he might provide himself with some in their place. And thus the thing has been done, and no otherwise. And the king wills that henceforth what has been thus done in this necessity be not drawn into consequence or example." [819]

The commons were not abashed by these arbitrary pretensions; they knew that by incessant remonstrances they should gain at least one essential point, that of preventing the crown from claiming these usurpations as uncontested prerogatives. The roll of Parliament in the next two years, the twenty-first and twenty-second of Edward III, is full of the same complaints on one side, and the same allegations of necessity on the other.[820] In the latter year the commons grant a subsidy, on condition that no illegal levying of money should take place, with several other remedial provisions; "and that these conditions should be entered on the roll of Parliament, as a matter of record, by which they may have remedy, if anything should be attempted to the contrary in time to come." From this year the complaints of extortion became rather less frequent; and soon afterward a statute was passed, that "no man shall be constrained to find men-at-arms, hobelers, nor archers, other than those which hold by such services, if it be not by common assent and grant made in Parliament." [821] Yet, even in the last year of Edward's reign, when the boundaries of prerogative and the rights of Parliament were better ascertained, the king lays a sort of claim to impose charges upon his subjects in cases of great necessity, and for the defence of his kingdom.[822] But this more humble language indicates a change in the spirit of government, which, after long fretting impatiently at the curb, began at length to acknowledge the controlling hand of law.

These are the chief instances of a struggle between the crown and commons as to arbitrary taxation; but there are two remarkable proceedings in the forty-fifth and forty-sixth of Edward which, though they would not have been endured in later times, are rather anomalies arising out of the unsettled state of the con-

[819] "Rot. Parl.." p. 160.
[820] Pp. 161, 166, 201.
[821] 25 E. III, stat. v, c. 8.
[822] "Rot. Parl.," vol. ii, p. 366.

stitution and the regency of parliamentary rights than mere encroachments of the prerogative. In the former year Parliament had granted a subsidy of fifty thousand pounds, to be collected by an assessment of twenty-two shillings and threepence upon every parish, on a presumption that the parishes in England amounted to forty-five thousand, whereas they were hardly a fifth of that number. This amazing mistake was not discovered till the Parliament had been dissolved. Upon its detection the king summoned a great council, consisting of one knight, citizen, and burgess, named by himself out of two that had been returned to the last Parliament.[223] To this assembly the chancellor set forth the deficiency of the last subsidy, and proved by the certificates of all the bishops in England how strangely the Parliament had miscalculated the number of parishes; whereupon they increased the parochial assessment, by their own authority, to one hundred and sixteen shillings.[224] It is obvious that the main intention of Parliament was carried into effect by this irregularity, which seems to have been the subject of no complaint. In the next Parliament a still more objectionable measure was resorted to: after the petitions of the commons had been answered, and the knights dismissed, the citizens and burgesses were convened before the Prince of Wales and the lords in a room near the white chamber, and solicited to renew their subsidy of forty shillings upon the tun of wine, and sixpence in the pound upon other imports, for safe convoy of shipping, during one year more, to which they assented, "and so departed." [225]

The second constitutional principle established in the reign of Edward III was that the king and two Houses of Parliament, in conjunction, possessed exclusively the right of legislation. Laws were now declared to be made by the king at the request of the commons, and by the assent of the lords and prelates. Such at least was the general form, though for many subsequent ages there was no invariable regularity in this respect. The commons, who till this reign were rarely mentioned, were now as rarely omitted in the enacting clause. In fact, it is evident from the rolls of Parliament that statutes were almost always founded upon their petition.[226] These petitions, with the respect-

[223] Prynne's "Fourth Register," p. 289.
[224] "Rot. Parl.," p. 304.
[225] "Rot. Parl.," p. 310. In the mode of levying subsidies a remarkable improvement took place early in the reign of Edward III. Originally two chief taxors were appointed by the king for each county, who named twelve persons in every hundred to assess the movable estate of all inhabitants according to its real value. But in 8 E. III, on complaint of Parliament that these taxors were partial, commissioners were sent round to compound with every town and parish for a gross sum, which was from thenceforth the fixed quota of subsidy, and raised by the inhabitants themselves. (Brady on "Boroughs," p. 81.)
[226] Laws appear to have been drawn up and proposed to the two Houses by the king down to the time of Edward I. (Hale's "Hist. of Common Law," p. 16.)
Sometimes the representatives of particular places address separate petitions to the king and council; as the citizens of London, the commons of Devonshire, etc. These are intermingled with the general petitions, and both together are

ive answers made to them in the king's name, were drawn up after the end of the session in the form of laws, and entered upon the statute roll. But here it must be remarked that the petitions were often extremely qualified and altered by the answer, insomuch that many statutes of this and some later reigns by no means express the true sense of the commons. Sometimes they contented themselves with showing their grievance, and praying remedy from the king and his council. Of this one eminent instance is the great statute of treasons. In the petition whereon this act is founded it is merely prayed that, "whereas the king's justices in different counties adjudge persons indicted before them to be traitors for sundry matters not known by the commons to be treason, it would please the king by his council, and by the great and wise men of the land, to declare what are treasons in this present Parliament." The answer to this petition contains the existing statute, as a declaration on the king's part.[827] But there is no appearance that it received the direct assent of the lower House. In the next reigns we shall find more remarkable instances of assuming a consent which was never positively given.

The statute of treasons, however, was supposed to be declaratory of the ancient law: in permanent and material innovations a more direct concurrence of all the estates was probably required. A new statute, to be perpetually incorporated with the law of England, was regarded as no light matter. It was a very common answer to a petition of the commons, in the early part of this reign, that it could not be granted without making a new law. After the Parliament of 14 Edward III a certain number of prelates, barons, and counsellors, with twelve knights and six burgesses, were appointed to sit from day to day in order to turn such petitions and answers as were fit to be perpetual into a statute; but for such as were of a temporary nature the king issued his letters-patent.[828] This reluctance to innovate without necessity, and to swell the number of laws which all were bound to know and obey with an accumulation of transitory enactments, led apparently to the distinction between statutes and ordinances. The latter are, indeed, defined by some lawyers to be regulations proceeding from the king and lords without concurrence of the commons. But if this be applicable to some ordinances, it is certain that the word, even when opposed to statute, with which it is often synonymous, sometimes denotes an act of the whole legislature. In the thirty-seventh of Edward III, when divers sumptuary regulations against excess of apparel were made in full Parliament, "it was demanded of the lords and commons, inasmuch as the matter of their petitions was novel and unheard

for the most part very numerous. In the roll of 50 Edw. III they amount to 140.

[827] "Rot. Parl.," p. 239.
[828] Id., p. 113.

of before, whether they would have them granted by way of ordinance or of statute. They answered that it would be best to have them by way of ordinance and not of statute, in order that anything which should need amendment might be amended at the next Parliament." [329] So much scruple did they entertain about tampering with the statute law of the land.

Ordinances which, if it were not for their partial or temporary operation, could not well be distinguished from laws,[330] were often established in great councils. These assemblies, which frequently occurred in Edward's reign, were hardly distinguishable, except in name, from Parliaments; being constituted not only of those who were regularly summoned to the House of Lords, but of deputies from counties, cities, and boroughs. Several places that never returned burgesses to Parliament have sent deputies to some of these councils.[331] The most remarkable of these was that held in the twenty-seventh of Edward III, consisting of one knight for each county, and of two citizens or burgesses from every city or borough wherein the ordinances of the staple were established.[332] These were previously agreed upon by the king and lords, and copies given, one to the knights, another to the burgesses. The roll tells us that they gave their opinion in writing to the council, after much deliberation, and that this was read and discussed by the great men. These ordinances fix the staple of wool in particular places within England, prohibit English merchants from exporting that article under pain of death, inflict sundry other penalties, create jurisdictions, and, in short, have the effect of a new and important law. After they were passed the deputies of the commons granted a subsidy for three years, complained of grievances and received answer, as if in a regular Parliament. But they were aware that these proceedings partook of some irregularity, and endeavoured, as was their constant method, to keep up the legal forms of the constitution. In the last petition of this council the commons pray: "Because many articles touching the state of the king and common profit of his kingdom have been agreed by him, the prelates, lords, and commons of his land, at this council, that the said articles may be recited at the next Parliament, and entered upon the roll; for this cause, that ordinances and agreements made in council are not of record, as if they had been made in a general Parliament." This, accordingly, was done at the ensuing Parliament, when these ordinances were

[329] "Rot. Parl.," p. 280.

[330] "If there be any difference between an ordinance and a statute, as some have collected, it is but only this, that an ordinance is but temporary till confirmed and made perpetual, but a statute is perpetual at first, and so have some ordinances also been." (Whitelocke on "Parliamentary Writ," vol. ii, p. 297; see "Rot. Parl.," vol. iii, p. 17; vol. iv, p. 35.)

[331] These may be found in Willis's "Notitia Parliamentaria." In 28 E. I the universities were sumomned to send members to a great council in order to defend the king's right to the kingdom of Scotland. (1 Prynne.)

[332] "Rot. Parl.," ii, 206.

expressly confirmed, and directed to be "holden for a statute to endure always."[333]

It must be confessed that the distinction between ordinances and statutes is very obscure, and perhaps no precise and uniform principle can be laid down about it. But it sufficiently appears that whatever provisions altered the common law or any former statute, and were entered upon the statute-roll, transmitted to the sheriffs, and promulgated to the people as general obligatory enactments, were holden to require the positive assent of both Houses of Parliament, duly and formally summoned.

Before we leave this subject it will be proper to take notice of a remarkable stretch of prerogative which, if drawn into precedent, would have effectually subverted this principle of parliamentary consent in legislation. In the fifteenth of Edward III petitions were presented of a bolder and more innovating cast than was acceptable to the court: That no peer should be put to answer for any trespass except before his peers; that commissioners should be assigned to examine the accounts of such as had received public moneys; that the judges and ministers should be sworn to observe the Great Charter and other laws; and that they should be appointed in Parliament. The last of these was probably the most obnoxious; but the king, unwilling to defer a supply which was granted merely upon condition that these petitions should prevail, suffered them to pass into a statute with an alteration which did not take off much from their efficacy—namely, that these officers should indeed be appointed by the king with the advice of his council, but should surrender their charges at the next Parliament, and be there responsible to any who should have cause of complaint against them. The chancellor, treasurer, and judges entered their protestation that they had not assented to the said statutes, nor could they observe them, in case they should prove contrary to the laws and customs of the kingdom, which they were sworn to maintain.[334] This is the first instance of a protest on the roll of Parliament against the passing of an act. Nevertheless, they were compelled to swear on the cross of Canterbury to its observance.[335]

This excellent statute was attempted too early for complete success. Edward's ministers plainly saw that it left them at the mercy of future Parliaments, who would readily learn the wholesome and constitutional principle of sparing the sovereign while they punished his advisers. They had recourse, therefore, to a violent measure, but which was likely in those times to be endured. By a proclamation addressed to all the sheriffs, the king revokes and annuls the statute, as contrary to the laws and customs of England and to his own just rights and prerogatives,

[333] "Rot. Parl.," ii, 253, 257. [334] Id., p. 131. [335] Id., p. 128.

which he had sworn to preserve; declaring that he had never consented to its passing, but, having previously protested that he would revoke it lest the Parliament should have been separated in wrath, had dissembled, as was his duty, and permitted the great seal to be affixed; and that it appeared to the earls, barons, and other learned persons of his kingdom with whom he had consulted, that, as the said statute had not proceeded from his own good-will, it was null, and could not have the name or force of law.[336] This revocation of a statute, as the price of which a subsidy had been granted, was a gross infringement of law, and undoubtedly passed for such at that time; for the right was already clear, though the remedy was not always attainable. Two years afterward Edward met his Parliament, when that obnoxious statute was formally repealed.[337]

Notwithstanding the king's unwillingness to permit this control of Parliament over his administration, he suffered, or rather solicited, their interference in matters which have since been reckoned the exclusive province of the crown. This was an unfair trick of his policy. He was desirous, in order to prevent any murmuring about subsidies, to throw the war upon Parliament as their own act, though none could have been commenced more selfishly for his own benefit, or less for the advantage of the people of England. It is called "the war which our lord the king has undertaken against his adversary of France by common assent of all the lords and commons of his realm in divers Parliaments."[338] And he several times referred it to them to advise upon the subject of peace. But the commons showed their humility or discretion by treating this as an invitation which it would show good manners to decline, though in the eighteenth of the king's reign they had joined with the lords in imploring the king to make an end of the war by a battle or by a suitable peace.[339] "Most dreaded lord," they say upon one occasion, "as to your war, and the equipment necessary for it, we are so ignorant and simple that we know not how, nor have the power, to devise; wherefore we pray your grace to excuse us in this matter, and that it please you, with advice of the great and

[336] Rymer, tome v, p. 282. This instrument betrays in its language Edward's consciousness of the violent step he was taking, and his wish to excuse it as much as possible.

[337] The commons in the 17th of Edw. III petition that the statutes made two years before be maintained in their force, having granted for them the subsidies which they enumerate, "which was a great spoiling (rançon) and grievous charge for them." But the king answered that, "perceiving the said statute to be against his oath, and to the blemish of his crown and royalty, and against the law of the land in many points, he had repealed it. But he would have the articles of the said statute examined, and what should be found honourable and profitable to the king and his people put into a new statute, and observed in future." ("Rot. Parl.," ii, 139.) But though this is inserted among the petitions, it appears from the roll a little before (p. 139, note 23), that the statute was actually repealed by common consent, such consent at least being recited, whether truly or not.

[338] Rymer, tome v, p. 165.

[339] P. 148.

wise persons of your council, to ordain what seems best to you for the honour and profit of yourself and your kingdom; and whatever shall be thus ordained by assent and agreement for you and your lords we readily assent to, and will hold it firmly established." [340] At another time, after their petitions had been answered, "it was showed to the lords and commons by Bartholomew de Burghersh, the king's chamberlain, how a treaty had been set on foot between the king and his adversary of France; and how he had good hope of a final and agreeable issue with God's help; to which he would not come without assent of the lords and commons. Wherefore the said chamberlain inquired on the king's part of the said lords and commons whether they would assent and agree to the peace, in case it might be had by treaty between the parties. To which the said commons with one voice replied, that whatever end it should please the king and lords to make of the treaty would be agreeable to them. On which answer the chamberlain said to the commons, 'Then you will assent to a perpetual treaty of peace if it can be had?' And the said commons answered at once and unanimously, 'Yes, yes.'" [341] The lords were not so diffident. Their great station as hereditary councillors gave them weight in all deliberations of government; and they seem to have pretended to a negative voice in the question of peace. At least they answer, upon the proposals made by David, King of Scots, in 1368, which were submitted to them in Parliament, that, "saving to the said David and his heirs the articles contained therein, they saw no way of making a treaty which would not openly turn to the disherison of the king and his heirs, to which they would on no account assent; and so departed for that day." [342] A few years before they had made a similar answer to some other propositions from Scotland.[343] It is not improbable that, in both these cases, they acted with the concurrence and at the instigation of the king; but the precedents might have been remembered in other circumstances.

A third important acquisition of the House of Commons during this reign was the establishment of their right to investigate and chatise the abuses of administration. In the fourteenth of Edward III a committee of the lords' House had been appointed to examine the accounts of persons responsible for the receipt of the last subsidy; but it does not appear that the commons were concerned in this.[344] The unfortunate statute of the next year contained a similar provision, which was annulled with the rest.

[340] 21 E. III, p. 165.
[341] 28 E. III, p. 261.
[342] 28 E. III, p. 295. Carte says, "the lords and commons, giving this advice separately, declared," etc. ("Hist. of England," vol. ii, p. 518.) I can find no mention of the commons doing this in the roll of Parliament.
[343] Rymer, p. 269.
[344] P. 114.

Many years elapsed before the commons tried the force of their vindictive arm. We must pass onward an entire generation of man, and look at the Parliament assembled in the fiftieth of Edward III. Nothing memorable as to the interference of the commons in government occurs before, unless it be their request, in the forty-fifth of the king, that no clergyman should be made chancellor, treasurer, or other great officer; to which the king answered that he would do what best pleased his council.[345]

It will be remembered by every one who has read our history that in the latter years of Edward's life his fame was tarnished by the ascendency of the Duke of Lancaster and Alice Perrers. The former, a man of more ambition than his capacity seems to have warranted, even incurred the suspicion of meditating to set aside the heir of the crown when the Black Prince should have sunk into the grave. Whether he were wronged or not by these conjectures, they certainly appear to have operated on those most concerned to take alarm at them. A Parliament met in April, 1376, wherein the general unpopularity of the king's administration, or the influence of the Prince of Wales, led to very remarkable consequences.[346] After granting a subsidy, the commons, "considering the evils of the country, through so many wars and other causes, and that the officers now in the king's service are insufficient without further assistance for so great a charge, pray that the council be strengthened by the addition of ten or twelve bishops, lords, and others, to be constantly at hand, so that no business of weight should be despatched without the consent of all, nor smaller matters without that of four or six."[347] The king pretended to come with alacrity into this measure, which was followed by a strict restraint on them and all other officers from taking presents in the course of their duty. After this, "the said commons appeared in Parliament, protesting that they had the same good-will as ever to assist the king with their lives and fortunes; but that it seemed to them, if their said liege lord had always possessed about him faithful counsellors and good officers, he would have been so rich that he would have had no need of charging his commons with subsidy or tallage, considering the great ransoms of the French and Scotch kings, and of so many other prisoners; and that it appeared to be for the private advantage of some near the king, and of others by their collusion, that the king and kingdom are

[345] Rymer, p. 304.

[346] Most of our general historians have slurred over this important session. The best view, perhaps, of its secret history will be found in Lowth's "Life of Wykeham"; an instructive and elegant work, only to be blamed for marks of that academical point of honour which makes a fellow of a college too indiscriminate an encomiast of its founder. Another modern book may be named with some commendation, though very inferior in its execution, Godwin's "Life of Chaucer," of which the Duke of Lancaster is the political hero.

[347] Rymer, p. 322.

so impoverished, and the commons so ruined. And they promised the king that, if he would do speedy justice on such as should be found guilty, and take from them what law and reason permit, with what had been already granted in Parliament, they will engage that he should be rich enough to maintain his wars for a long time, without much charging his people in any manner." They next proceeded to allege three particular grievances: the removal of the staple from Calais, where it had been fixed by Parliament, through the procurement and advice of the said private counsellors about the king; the participation of the same persons in lending money to the king at exorbitant usury; and their purchasing at a low rate, for their own benefit, old debts from the crown, the whole of which they had afterward induced the king to repay to themselves. For these and for many more misdemeanours the commons accused and impeached the Lords Latimer and Nevil, with four merchants—Lyons, Ellis, Peachey, and Bury.[848] Latimer had been chamberlain, and Nevil held another office. The former was the friend and creature of the Duke of Lancaster. Nor was this Parliament at all nice in touching a point where kings least endure their interference. An ordinance was made, that, "whereas many women prosecute the suits of others in courts of justice by way of maintenance, and to get profit thereby, which is displeasing to the king, he forbids any woman henceforward, and especially Alice Perrers, to do so, on pain of the said Alice forfeiting all her goods, and suffering banishment from the kingdom." [849]

The part which the Prince of Wales, who had ever been distinguished for his respectful demeanour toward Edward, bore in this unprecedented opposition is strong evidence of the jealousy with which he regarded the Duke of Lancaster; and it was led in the House of Commons by Peter de la Mare, a servant of the Earl of March, who, by his marriage with Philippa, heiress of Lionel, Duke of Clarence, stood next after the young Prince Richard in lineal succession to the crown. The proceedings of this session were, indeed, highly popular. But no House of Commons would have gone such lengths on the mere support of popular opinion, unless instigated and encouraged by higher authority. Without this their petitions might perhaps have obtained, for the sake of subsidy, an immediate consent: but those who took the lead in preparing them must have remained unsheltered after a dissolution, to abide the vengeance of the crown, with no assurance that another Parliament would espouse their cause as its own. Such, indeed, was their fate in the present instance. Soon after the dissolution of Parliament, the Prince of Wales, who, long sinking by fatal decay, had rallied his ex-

[848] Rymer, p. 322. [849] Id., p. 329.

piring energies for this domestic combat, left his inheritance to a child ten years old, Richard of Bordeaux. Immediately after this event Lancaster recovered his influence, and the former favourites returned to court. Peter de la Mare was confined at Nottingham, where he remained two years. The citizens, indeed, attempted an insurrection, and threatened to burn the Savoy, Lancaster's residence, if De la Mare was not released; but the Bishop of London succeeded in appeasing them.[350] A Parliament met next year which overthrew the work of its predecessor, restored those who had been impeached, and repealed the ordinance against Alice Perrers.[351] So little security will popular assemblies ever afford against arbitrary power, when deprived of regular leaders and the consciousness of mutual fidelity.

The policy adopted by the Prince of Wales and Earl of March, in employing the House of Commons as an engine of attack against an obnoxious ministry, was perfectly novel, and indicates a sensible change in the character of our constitution. In the reign of Edward II Parliament had little share in resisting the government; much more was effected by the barons through risings of their feudal tenantry. Fifty years of authority better respected, of law better enforced, had rendered these more perilous, and of a more violent appearance than formerly. A surer resource presented itself in the increased weight of the lower House in Parliament. And this indirect aristocratical influence gave a surprising impulse to that assembly, and particularly tended to establish beyond question its control over public abuses. It is no less just to remark that it also tended to preserve the relation and harmony between each part and the other, and to prevent that jarring of emulation and jealousy which, though generally found in the division of power between a noble and a popular estate, has scarcely ever caused a dissension, except in cases of little moment, between our two Houses of Parliament.

The commons had sustained with equal firmness and discretion a defensive war against arbitrary power under Edward III: they advanced with very different steps toward his successor. Upon the king's death, though Richard's coronation took place without delay, and no proper regency was constituted, yet a Council of Twelve, whom the great officers of state were to obey, supplied its place to every effectual intent. Among these, the Duke of Lancaster was not numbered, and he retired from court in some disgust. In the first Parliament of the young king a large proportion of the knights who had sat in that which im-

[350] Anonym., "Hist. Edw. III," ad calcem Hemingford, pp. 444, 448. Walsingham gives a different reason, p. 192.

[351] "Rot. Parl.," p. 374. Not more than six or seven of the knights who had sat in the last Parliament were returned to this, as appears by the writs in Prynne's "Fourth Register," pp. 302, 311.

peached the Lancastrian party were returned.[852] Peter de la Mare, now released from prison, was elected speaker; a dignity which, according to some, he had filled in the Good Parliament, as that of the fiftieth of Edward III was popularly styled, though the rolls do not mention either him or any other as bearing that honourable name before Sir Thomas Hungerford in the Parliament of the following year.[853] The prosecution against Alice Perrers was now revived; not, as far as appears, by direct impeachment of the commons; but articles were exhibited against her in the House of Lords on the king's part, for breaking the ordinance made against her intermeddling at court, upon which she received judgment of banishment and forfeiture.[854] At the request of the lower House, the lords, in the king's name, appointed nine persons of different ranks—three bishops, two earls, two bannerets, and two bachelors—to be a permanent council about the king, so that no business of importance should be transacted without their unanimous consent. The king was even compelled to consent that, during his minority, the chancellor, treasurer, judges, and other chief offices should be made in Parliament; by which provision, combined with that of the parliamentary council, the whole executive government was transferred to the two Houses. A petition that none might be employed in the king's service, nor belong to his council, who had been formerly accused upon good grounds, struck at Lord Latimer, who had retained some degree of power in the new establishment. Another, suggesting that Gascony, Ireland, Artois, and the Scottish marches were in danger of being lost for want of good officers, though it was so generally worded as to leave the means of remedy to the king's pleasure, yet shows a growing energy and self-confidence in that assembly which not many years before had thought the question of peace or war too high for their deliberation. Their subsidy was sufficiently liberal; but they took care to pray the king that fit persons might be assigned for its receipt and disbursement, lest it should any way be diverted from the purposes of the war. Accordingly, Walworth and Philpot, two eminent citizens of London, were appointed to this office, and sworn in Parliament to its execution.[855]

But whether through the wastefulness of government, or rather because Edward's legacy, the French war, like a ruinous and interminable lawsuit, exhausted all public contributions, there was an equally craving demand for subsidy at the next meeting of Parliament. The commons now made a more serious stand.

[852] Walsingham (p. 200) says pene omnes; but the list published in Prynne's "Fourth Register" induces me to qualify this loose expression. Alice Perrers had bribed, he tells us, many of the lords and all the lawyers of England; yet by the perseverance of these knights she was convicted.

[853] "Rot. Parl.," vol. ii, p. 374.

[854] Vol. iii, p. 12.

[855] Idem.

The speaker, Sir James Pickering, after the protestation against giving offence which has since become more matter of form than, perhaps, it was then considered, reminded the lords of the council of a promise made to the last Parliament, that, if they would help the king for once with a large subsidy, so as to enable him to undertake an expedition against the enemy, he trusted not to call on them again, but to support the war from his own revenues; in faith of which promise there had been granted the largest sum that any King of England had ever been suffered to levy within so short a time, to the utmost loss and inconvenience of the commons, part of which ought still to remain in the treasury, and render it unnecessary to burden anew the exhausted people. To this Scrope, lord steward of the household, protesting that he knew not of any such promise, made answer by order of the king, that, "saving the honour and reverence of our lord the king, and the lords there present, the commons did not speak truth in asserting that part of the last subsidy should be still in the treasury; it being notorious that every penny had gone into the hands of Walworth and Philpot, appointed and sworn treasurers in the last Parliament, to receive and expend it upon the purposes of the war, for which they had in effect disbursed the whole." Not satisfied with this general justification, the commons pressed for an account of the expenditure. Scrope was again commissioned to answer that, "though it had never been seen that of a subsidy or other grant made to the king in Parliament or out of Parliament by the commons any account had afterward been rendered to the commons, or to any other except the king and his officers, yet the king, to gratify them, of his own accord, without doing it by way of right, would have Walworth, along with certain persons of the council, exhibit to them in writing a clear account of the receipt and expenditure, upon condition that this should never be used as a precedent, nor inferred to be done otherwise than by the king's spontaneous command." The commons were again urged to provide for the public defence, being their own concern as much as that of the king. But they merely shifted their ground and had recourse to other pretences. They requested that five or six peers might come to them, in order to discuss this question of subsidy. The lords entirely rejected this proposal, and affirmed that such a proceeding had never been known except in the last three Parliaments; but allowed that it had been the course to elect a committee of eight or ten from each House, to confer easily and without noise together. The commons acceded to this, and a committee of conference was appointed, though no result of their discussion appears upon the roll.

Upon examining the accounts submitted to them, these sturdy

commoners raised a new objection. It appeared that large sums had been expended upon garrisons in France and Ireland and other places beyond the kingdom, of which they protested themselves not liable to bear the charge. It was answered that Gascony and the king's other dominions beyond sea were the outworks of England, nor could the people ever be secure from war at their thresholds unless these were maintained. They lastly insisted that the king ought to be rich through the wealth that had devolved on him from his grandfather. But this was affirmed, in reply, to be merely sufficient for the payment of Edward's creditors. Thus driven from all their arguments, the commons finally consented to a moderate additional imposition upon the export of wool and leather, which were already subject to considerable duties, apologizing on account of their poverty for the slenderness of their grant.[856]

The necessities of government, however, let their cause be what it might, were by no means feigned; and a new Parliament was assembled about seven months after the last, wherein the king, without waiting for a petition, informed the commons that the treasurers were ready to exhibit their accounts before them. This was a signal victory after the reluctant and ungracious concession made to the last Parliament. Nine persons of different ranks were appointed at the request of the commons to investigate the state of the revenue and the disposition which had been made of the late king's personal estate. They ended by granting a poll-tax, which they pretended to think adequate to the supply required.[857] But in those times no one possessed any statistical knowledge, and every calculation which required it was subject to enormous error, of which we have already seen an eminent example.[858] In the next Parliament (3 Richard II) it was set forth that only twenty-two thousand pounds had been collected by the poll-tax, while the pay of the king's troops hired for the expedition to Brittany, the pretext of the grant, had amounted for but half a year to fifty thousand pounds. The king, in short, was more straitened than ever. His distresses gave no small advantage to the commons. Their speaker was instructed to declare that, as it appeared to them, if the affairs of their liege lord had been properly conducted at home and abroad, he could not have wanted aid of his commons, who now are poorer than before. They pray that, as the king was so much advanced in age and discretion, his perpetual council (appointed in his first Parliament) might be discharged of their labours, and that, instead of them, the five chief officers of state—to wit, the chancellor, treasurer, keeper of the privy seal, chamberlain, and steward of the household—might be named in Parliament, and de-

[856] "Rot. Parl.," pp. 35-38. [857] Id., p. 57. [858] See p. 607 of this volume.

clared to the commons, as the king's sole counsellers, not removable before the next Parliament. They required also a general commission to be made out, similar to that in the last session, giving powers to a certain number of peers and other distinguished persons to inquire into the state of the household, as well as into all receipts and expenses since the king's accession. The former petition seems to have been passed over;[359] but a commission as requested was made out to three prelates, three earls, three bannerets, three knights, and three citizens.[360] After guarding thus, as they conceived, against malversation, but in effect rather protecting their posterity than themselves, the commons prolonged the last imposition on wool and leather for another year.

It would be but repetition to make extracts from the rolls of the next two years; we have still the same tale—demand of subsidy on one side, remonstrance and endeavours at reformation on the other. After the tremendous insurrection of the villeins in 1382, a Parliament was convened to advise about repealing the charters of general manumission, extorted from the king by the pressure of circumstances. In this measure all concurred; but the commons were not afraid to say that the late risings had been provoked by the burdens which a prodigal court had called for in the preceding session. Their language is unusually bold. "It seemed to them, after full deliberation," they said, "that, unless the administration of the kingdom were speedily reformed, the kingdom itself would be utterly lost and ruined forever, and therein their lord the king, with all the peers and commons, which God forbid. For true it is that there are such defects in the said administration, as well about the king's person and his household as in his courts of justice; and by grievous oppressions in the country through maintainers of suits, who are, as it were, kings in the country, that right and law are come to nothing, and the poor commons are from time to time so pillaged and ruined, partly by the king's purveyors of the household, and others who pay nothing for what they take, partly by the subsidies and tallages raised upon them, and besides by the oppressive behaviour of the servants of the king and other lords, and especially of the aforesaid maintainers of suits, that they are reduced to greater poverty and discomfort than ever they were before. And moreover, though great sums have been continually granted by and levied upon them, for the defence of the kingdom, yet they are not the better defended against their ene-

[359] Nevertheless, the commons repeated it in their schedule of petitions, and received an evasive answer, referring to an ordinance made in the first Parliament of the king, the application of which is indefinite. ("Rot. Parl.," p. 82.)

[360] P. 73. In Rymer, tome viii, p. 250, the Archbishop of York's name appears among these commissioners, which makes their number sixteen. But it is plain by the instrument that only fifteen were meant to be appointed.

mies, but every year are plundered and wasted by sea and land, without any relief. Which calamities the said poor commons, who lately used to live in honour and prosperity, can no longer endure. And to speak the real truth, these injuries lately done to the poorer commons, more than they ever suffered before, caused them to rise and to commit the mischief done in their late riot; and there is still cause to fear greater evils, if sufficient remedy be not timely provided against the outrages and oppressions aforesaid. Wherefore may it please our lord the king, and the noble peers of the realm now assembled in this Parliament, to provide such remedy and amendment as to the said administration that the state and dignity of the king in the first place, and of the lords, may be preserved, as the commons have always desired, and the commons may be put in peace; removing, as soon as they can be detected, evil ministers and counsellors, and putting in their stead the best and most sufficient, and taking away all the bad practices which have led to the last rising, or else none can imagine that this kingdom can longer subsist without greater misfortunes than it ever endured. And for God's sake let it not be forgotten that there be put about the king, and of his council, the best lords and knights that can be found in the kingdom!

"And be it known" (the entry proceeds) "that, after the king our lord with the peers of the realm and his council had taken advice upon these requests made to him for his good and his kingdom's as it really appeared to him, willed and granted that certain bishops, lords, and others should be appointed to survey and examine in privy council both the government of the king's person and of his household, and to suggest proper remedies wherever necessary, and report them to the king. And it was said by the peers in Parliament that, as it seemed to them, if reform of government were to take place throughout the kingdom, it should begin by the chief member, which is the king himself, and so from person to person, as well churchmen as others, and place to place, from higher to lower, without sparing any degree."[861] A considerable number of commissioners were accordingly appointed, whether by the king alone or in Parliament does not appear; the latter, however, is more probable. They seem to have made some progress in the work of reformation, for we find that the officers of the household were sworn to observe their regulations. But in all likelihood these were soon neglected.

It is not wonderful that, with such feelings of resentment toward the crown the commons were backward in granting subsidies. Perhaps the king would not have obtained one at all if

[861] "Rot. Parl.," 5 R. II, p. 100.

he had not withheld his charter of pardon for all offences committed during the insurrection. This was absolutely necessary to restore quiet among the people; and though the members of the commons had certainly not been insurgents, yet inevitable irregularities had occurred in quelling the tumults, which would have put them too much in the power of those unworthy men who filled the benches of justice under Richard. The king declared that it was unusual to grant a pardon without a subsidy; the commons still answered that they would consider about that matter; and the king instantly rejoined that he would consider about his pardon (s'aviseroit de sa dite grâce) till they had done what they ought. They renewed at length the usual tax on wool and leather.[362]

This extraordinary assumption of power by the commons was not merely owing to the king's poverty. It was encouraged by the natural feebleness of a disunited government. The high rank and ambitious spirit of Lancaster gave him no little influence, though contending with many enemies at court as well as the ill will of the people. Thomas of Woodstock, the king's youngest uncle, more able and turbulent than Lancaster, became, as he grew older, an eager competitor for power, which he sought through the channel of popularity. The Earls of March, Arundel, and Warwick bore a considerable part, and were the favourites of Parliament. Even Lancaster, after a few years, seems to have fallen into popular courses, and recovered some share of public esteem. He was at the head of the reforming commission in the fifth of Richard II, though he had been studiously excluded from those preceding. We can not hope to disentangle the intrigues of this remote age, as to which our records are of no service, and the chroniclers are very slightly informed. So far as we may conjecture, Lancaster, finding his station insecure at court, began to solicit the favour of the commons, whose hatred of the administration abated their former hostility toward him.[363]

The character of Richard II was now developing itself, and the hopes excited by his remarkable presence of mind in confronting the rioters on Blackheath were rapidly destroyed. Not that he was wanting in capacity, as has been sometimes imagined. For if we measure intellectual power by the greatest exertion it ever displays, rather than by its average results, Richard II was a man of considerable talents. He possessed, along with much dissimulation, a decisive promptitude in seizing the critical moment for action. Of this quality, besides his celebrated behaviour

[362] Id., p. 104.

[363] The commons granted a subsidy, 7 R. II, to support Lancaster's war in Castile ("Rot. Parl.," p. 284). Whether the populace changed their opinion of him I know not. He was still disliked by them two years before. The insurgents of 1382 are said to have compelled men to swear that they would obey King Richard and the commons, and that they would accept no king named John. (Walsingham, p. 248.)

toward the insurgents, he gave striking evidence in several circumstances which we shall have shortly to notice. But his ordinary conduct belied the abilities which on these rare occasions shone forth, and rendered them ineffectual for his security. Extreme pride and violence, with an inordinate partiality for the most worthless favourites, were his predominant characteristics. In the latter quality, and in the events of his reign, he forms a pretty exact parallel to Edward II. Scrope, lord chancellor, who had been appointed in Parliament, and was understood to be irremovable without its concurrence, lost the great seal for refusing to set it to some prodigal grants. Upon a slight quarrel with Archbishop Courtney, the king ordered his temporalities to be seized, the execution of which Michael de la Pole, his new chancellor, and a favourite of his own, could hardly prevent. This was accompanied with indecent and outrageous expressions of anger, unworthy of his station and of those whom he insulted.[364]

Though no king could be less respectable than Richard, yet the constitution invested a sovereign with such ample prerogative that it was far less easy to resist his personal exercise of power than the unsettled councils of a minority. In the Parliament 6 Richard II, sess. 2, the commons pray certain lords, whom they name, to be assigned as their advisers. This had been permitted in the last two sessions without exception.[365] But the king, in granting their request, reserved his right of naming any others.[366] Though the commons did not relax in their importunities for the redress of general grievances, they did not venture to intermeddle as before with the conduct of administration. They did not even object to the grant of the marquisate of Dublin, with almost a princely dominion over Ireland; which enormous donation was confirmed by act of Parliament to Vere, a favourite of the king.[367] A petition that the officers of state should annually visit and inquire into his household was answered that the king would do what he pleased.[368] Yet this was little in comparison of their former proceedings.

There is nothing, however, more deceitful to a monarch, unsupported by an armed force, and destitute of wary advisers, than this submission of his people. A single effort was enough to overturn his government. Parliament met in the tenth year of his reign, steadily determined to reform the administration, and especially to punish its chief leader, Michael de la Pole, Earl of Suffolk and lord chancellor. According to the remarkable nar-

[364] Walsing., pp. 290, 315, 317.
[365] "Rot. Parl.," 5 R. II, p. 100; 6 R. II, sess. 1, p. 134.
[366] P. 145.
[367] "Rot. Parl.," 9 R. II, p. 209.
[368] Id., p. 213. It is, however, asserted in the articles of impeachment against Suffolk, and admitted by his defence, that nine lords had been appointed in the last Parliament—viz., 9 R. II—to inquire into the state of the household, and reform whatever was amiss. But nothing of this appears in the roll.

ration of a contemporary historian,[369] too circumstantial to be rejected, but rendered somewhat doubtful by the silence of all other writers and of the parliamentary roll, the king was loitering at his palace at Eltham when he received a message from the two Houses, requesting the dismissal of Suffolk, since they had matter to allege against him that they could not move while he kept the office of chancellor. Richard, with his usual intemperance, answered that he would not for their request remove the meanest scullion from his kitchen. They returned a positive refusal to proceed on any public business until the king should appear personally in Parliament and displace the chancellor. The king required forty knights to be deputed from the rest to inform him clearly of their wishes. But the commons declined a proposal in which they feared, or affected to fear, some treachery. At length the Duke of Gloucester and Arundel, Bishop of Ely, were commissioned to speak the sense of Parliament; and they delivered it, if we may still believe what we read, in very extraordinary language, asserting that there was an ancient statute, according to which, if the king absented himself from Parliament without just cause during forty days, which he had now exceeded, every man might return without permission to his own country; and, moreover, there was another statute, and (as they might more truly say) a precedent of no remote date, that if a king, by bad counsel or his own folly and obstinacy, alienated himself from his people, and would not govern according to the laws of the land and the advice of the peers, but madly and wantonly followed his own single will, it should be lawful for them, with the common assent of the people, to expel him from his throne, and elevate to it some near kinsman of the royal blood. By this discourse the king was induced to meet his Parliament, where Suffolk was removed from his office, and the impeachment against him commenced.[370]

The charges against this minister, without being wholly frivolous, were not so weighty as the clamour of the commons might have led us to expect. Besides forfeiting all his grants from the crown, he was committed to prison, there to remain till he

[369] Knyghton, in Twysden X. Script., col. 2680.

[370] Upon full consideration, I am much inclined to give credit to this passage of Knyghton, as to the main facts; and perhaps even the speech of Gloucester and the Bishop of Ely is more likely to have been made public by them than invented by so jejune a historian. Walsingham, indeed, says nothing of the matter; but he is so unequally informed and so frequently defective that we can draw no strong inference from his silence. What most weighs with me is that Parliament met on October 1, 1387, and was not dissolved till November 28th; a longer period than the business done in it seems to have required; and also that Suffolk, who opened the session as chancellor, is styled "darrein chancellor" in the articles of impeachment against him; so that he must have been removed in the interval, which tallies with Knyghton's story. Besides, it is plain, from the famous questions subsequently put by the king to his judges at Nottingham, that both the right of retiring without a regular dissolution, and the precedent of Edward II, had been discussed in Parliament, which does not appear anywhere else than in Knyghton.

should have paid such fine as the king might impose; a sentence that would have been outrageously severe in many cases, though little more than nugatory in the present.[371]

This was the second precedent of that grand constitutional resource, parliamentary impeachment: and more remarkable from the eminence of the person attacked than that of Lord Latimer in the fiftieth year of Edward III.[372] The commons were content to waive the prosecution of any other ministers; but they rather chose a scheme of reforming the administration, which should avert both the necessity of punishment and the malversations that provoked it. They petitioned the king to ordain in Parliament certain chief officers of his household and other lords of his council, with power to reform those abuses, by which his crown was so much blemished that the laws were not kept and his revenues were dilapidated, confirming by a statute a commission for a year, and forbidding, under heavy penalties, any one from opposing, in private or openly, what they should advise.[373] With this the king complied, and a commission founded upon the prayer of Parliament was established by statute. It comprehended fourteen persons of the highest eminence for rank and general estimation; princes of the blood and ancient servants of the crown, by whom its prerogatives were not likely to be unnecessarily impaired. In fact, the principle of this commission, without looking back at the precedents in the reign of John, Henry III, and Edward II, which yet were not without their weight as constitutional analogies, was merely that which the commons had repeatedly maintained during the minority of the present king, and which had produced the former commissions of reform in the third and fifth years of his reign. These were, upon the whole, nearly the same in their operation. It must be owned there was a more extensive sway virtually given to the lords now appointed by the penalties imposed on any who should endeavour to obstruct what they might advise; the design as well as tendency of which was no doubt to throw the whole administration into their hands during the period of this commission.

Those who have written our history with more or less of a Tory bias exclaim against this parliamentary commission as an unwarrantable violation of the king's sovereignty, and even impartial men are struck at first sight by a measure that seems to overset the natural balance of our constitution. But it would

[371] "Rot. Parl.," vol. iii, p. 219.

[372] Articles had been exhibited by the chancellor before the peers, in the seventh of the king, against Spencer, Bishop of Norwich, who had led a considerable army in a disastrous expedition against the Flemings, adherents to the antipope Clement in the schism. This crusade had been exceedingly popular, but its ill success had the usual effect. The commons were not parties in this proceeding. ("Rot. Parl.," p. 153.)

[373] "Rot. Parl.," p. 221.

be unfair to blame either those concerned in this commission, some of whose names at least have been handed down with unquestioned respect, or those high-spirited representatives of the people whose patriot firmness has been hitherto commanding all our sympathy and gratitude, unless we could distinctly pronounce by what gentler means they could restrain the excesses of government. Thirteen Parliaments had already met since the accession of Richard; in all the same remonstrances had been repeated, and the same promises renewed. Subsidies, more frequent than in any former reign, had been granted for the supposed exigencies of the war; but this was no longer illuminated by those dazzling victories which give to fortune the mien of wisdom; the coasts of England were perpetually ravaged, and her trade destroyed, while the administration incurred the suspicion of diverting to private uses that treasure which they so feebly and unsuccessfully applied to the public service. No voice of his people, until it spoke in thunder, would stop an intoxicated boy in the wasteful career of dissipation. He loved festivals and pageants, the prevailing folly of his time, with unusual frivolity; and his ordinary living is represented as beyond comparison more showy and sumptuous than even that of his magnificent and chivalrous predecessor. Acts of Parliament were no adequate barriers to his misgovernment. "Of what avail are statutes," says Walsingham, "since the king with his privy council is wont to abolish what Parliament has just enacted?" [874] The constant prayer of the commons in every session, that former statutes might be kept in force, is no slight presumption that they were not secure of being regarded. It may be true that Edward III's government had been full as arbitrary, though not so unwise, as his grandson's; but this is the strongest argument that nothing less than an extraordinary remedy could preserve the still unstable liberties of England.

The best plea that could be made for Richard was his inexperience, and the misguided suggestions of favourites. This, however, made it more necessary to remove those false advisers and to supply that inexperience. Unquestionably the choice of ministers is reposed in the sovereign; a trust, like every other attribute of legitimate power, for the public good, not, what no legitimate power can ever be, the instrument of selfishness or caprice. There is something more sacred than the prerogative, or even than the constitution: the public weal, for which all powers are granted, and to which they must all be referred. For this public weal it is confessed to be sometimes necessary to shake the possessor of the throne out of his seat; could it never be permitted to suspend, though but indirectly and for a

[874] "Rot. Parl.," p. 281.

time, the positive exercise of misapplied prerogatives? He has learned in a very different school from myself who denies to Parliament at the present day a preventive as well as vindictive control over the administration of affairs; a right of resisting, by those means which lie within its sphere, the appointment of unfit ministers. These means are now indirect; they need not to be the less effectual, and they are certainly more salutary on that account. But we must not make our notions of the constitution in its perfect symmetry of manhood the measure of its infantine proportions, nor expect from a Parliament just struggling into life, and "pawing to get free its hinder parts," the regularity of definite and habitual power.

It is assumed rather too lightly by some of those historians to whom I have alluded that these commissioners, though but appointed for a twelvemonth, designed to retain longer, or would not in fact have surrendered, their authority. There is certainly a danger in these delegations of pre-eminent trust, but I think it more formidable in a republican form than under such a government as our own. The spirit of the people, the letter of the law, were both so decidedly monarchical that no glaring attempt of the commissioners to keep the helm continually in their hands, though it had been in the king's name, would have had a fair probability of success. And an oligarchy of fourteen persons, different in rank and profession, even if we should impute criminal designs to all of them, was ill calculated for permanent union. Indeed, the facility with which Richard reassumed his full powers two years afterward, when misconduct had rendered his circumstances far more unfavourable, gives the corroboration of experience to this reasoning. By yielding to the will of his Parliament and to a temporary suspension of prerogative, this unfortunate prince might probably have reigned long and peacefully; the contrary course of acting led eventually to his deposition and miserable death.

Before the dissolution of Parliament Richard made a verbal protestation that nothing done therein should be in prejudice of his rights; a reservation not unusual when any remarkable concession was made, but which could not decently be interpreted, whatever he might mean, as a dissent from the statute just passed. Some months had intervened when the king, who had already released Suffolk from prison and restored him to his favour, procured from the judges, whom he had summoned to Nottingham, a most convenient set of answers to questions concerning the late proceedings in Parliament. Tresilian and Belknap, chief justices of the King's Bench and Common Pleas, with several other judges, gave it under their seals that the late statute and commission were derogatory to the prerogative; that all

who procured it to be passed, or persuaded or compelled the king to consent to it, were guilty of treason; that the king's business must be proceeded upon before any other in Parliament; that he may put an end to the session at his pleasure; that his ministers can not be impeached without his consent; that any members of Parliament contravening the last three articles incur the penalties of treason, and especially he who moved for the sentence of deposition against Edward II to be read; and that the judgment against the Earl of Suffolk might be revoked as altogether erroneous.

These answers, perhaps extorted by menaces, as all the judges, except Tresilian, protested before the next Parliament, were for the most part servile and unconstitutional. The indignation which they excited, and the measures successfully taken to withstand the king's designs, belong to general history; but I shall pass slightly over that season of turbulence, which afforded no legitimate precedent to our constitutional annals. Of the five lords appellants, as they were called, Gloucester, Derby, Nottingham, Warwick, and Arundel, the three former, at least, have little claim to our esteem; but in every age it is the sophism of malignant and peevish men to traduce the cause of freedom itself on account of the interested motives by which its ostensible advocates have frequently been actuated. The Parliament, who had the country thoroughly with them, acted no doubt honestly, but with an inattention to the rules of law, culpable indeed, yet from which the most civilized of their successors, in the heat of passion and triumph, have scarcely been exempt. Whether all with whom they dealt severely, some of them apparently of good previous reputation, merited such punishment, is more than, upon uncertain evidence, a modern writer can profess to decide.[375]

Notwithstanding the death or exile of all Richard's favourites, and the oath taken not only by Parliament, but by every class of the people, to stand by the lords appellants, we find him, after about a year, suddenly annihilating their pretensions, and snatching the reins again without obstruction. The secret cause of this event is among the many obscurities that attend the history of his reign. It was conducted with a spirit and activity which broke out two or three times in the course of his imprudent life; but we may conjecture that he had the advantage of disunion among his enemies. For some years after this the king's administration was prudent. The great seal, which he took away from Archbishop Arundel, he gave to Wykeham, Bishop of Winchester, another member of the reforming commission, but a man of great moderation and political experience. Some time

[375] The judgment against Simon de Burley, one of those who were executed on this occasion, upon impeachment of the commons, was reversed under Henry IV—a fair presumption of its injustice. ("Rot. Parl.," vol. iii, p. 464.)

after he restored the seal to Arundel, and reinstated the Duke of Gloucester in the council. The Duke of Lancaster, who had been absent during the transactions of the tenth and eleventh years of the king, in prosecution of his Castilian war, formed a link between the parties, and seems to have maintained some share of public favour.

There was now a more apparent harmony between the court and the Parliament. It seems to have been tacitly agreed that they should not interfere with the king's household expenses; and they gratified him in a point where his honour had been most wounded, declaring his prerogative to be as high and unimpaired as that of his predecessors, and repealing the pretended statute by virtue of which Edward II was said to have been deposed.[876] They were provident enough, however, to grant conditional subsidies, to be levied only in case of a royal expedition against the enemy; and several were accordingly remitted by proclamation, this condition not being fulfilled. Richard never ventured to recall his favourites, though he testified his unabated affection for Vere by a pompous funeral. Few complaints, unequivocally affecting the ministry, were presented by the commons. In one Parliament the chancellor, treasurer, and counsel resigned their offices, submitting themselves to its judgment in case any matter of accusation should be alleged against them. The commons, after a day's deliberation, probably to make their approbation appear more solemn, declared in full Parliament that nothing amiss had been found in the conduct of these ministers, and that they held them to have faithfully discharged their duties. The king reinstated them accordingly, with a protestation that this should not be made a precedent, and that it was his right to change his servants at pleasure.[877]

But this summer season was not to last forever. Richard had but dissembled with those concerned in the transactions of 1388, none of whom he could ever forgive. These lords in lapse of time were divided among each other. The Earls of Derby and Nottingham were brought into the king's interest. The Earl of Arundel came to an open breach with the Duke of Lancaster, whose pardon he was compelled to ask for an unfounded accusation in Parliament.[878] Gloucester's ungoverned ambition, elated by popularity, could not brook the ascendency of his brother Lancaster, who was much less odious to the king. He had constantly urged and defended the concession of Guienne to this prince to be held for life, reserving only his liege homage to Richard as King of France;[879] a grant as unpopular among

[876] "Rot. Parl.," 14 R. II, p. 279; 15 R. II, p. 286.
[877] "Rot. Parl.," 13 R. II, p. 258.
[878] 17 R. II, p. 313.
[879] Rymer, tome vii, pp. 583, 659.

the natives of that country as it was derogatory to the crown; but Lancaster was not much indebted to his brother for assistance which was only given in order to diminish his influence in England. The truce with France, and the king's French marriage, which Lancaster supported, were passionately opposed by Gloucester. And the latter had given keener provocation by speaking contemptuously of that misalliance with Katherine Swineford which contaminated the blood of Plantagenet. To the Parliament summoned in the twentieth of Richard, one object of which was to legitimate the Duke of Lancaster's antenuptial children by this lady, neither Gloucester nor Arundel would repair. There passed in this assembly something remarkable, as it exhibits not only the arbitrary temper of the king, a point by no means doubtful, but the inefficiency of the commons to resist it without support from political confederacies of the nobility. The circumstances are thus related in the record.

During the session the king sent for the lords into Parliament one afternoon, and told them how he had heard of certain articles of complaint made by the commons in conference with them a few days before, some of which appeared to the king against his royalty, estate, and liberty, and commanded the chancellor to inform him fully as to this. The chancellor accordingly related the whole matter, which consisted of four alleged grievances—namely, that sheriffs and escheators, notwithstanding a statute, are continued in their offices beyond a year;[880] that the Scottish marches were not well kept; that the statute against wearing great men's liveries was disregarded; and, lastly, that the excessive charges of the king's household ought to be diminished, arising from the multitude of bishops and of ladies who are there maintained at his cost.

Upon this information the king declared to the lords that through God's gift he is by lineal right of inheritance King of England, and will have the royalty and freedom of his crown, from which some of these articles derogate. The first petition, that sheriffs should never remain in office beyond a year, he rejected; but, passing lightly over the rest, he took most offence that the commons, who are his lieges, should take on themselves to make any ordinance respecting his royal person or household, or those whom he might please to have about him. He enjoined, therefore, the lords to declare plainly to the commons his

[880] Hume has represented this as if the commons had petitioned for the continuance of sheriffs beyond a year, and grounds upon this mistake part of his defence of Richard II. (Note to vol. ii, p. 270, 4to edit.) For this he refers to Cotton's Abridgment; whether rightly or not I can not say, being little acquainted with that inaccurate book, upon which it is unfortunate that Hume relied so much. The passage from Walsingham in the same note is also wholly perverted, as the reader will discover without further observation. A historian must be strangely warped who quotes a passage explicitly complaining of illegal acts in order to infer that those very acts were legal.

pleasure in this matter; and especially directed the Duke of Lancaster to make the speaker give up the name of the person who presented a bill for this last article in the lower House.

The commons were in no state to resist this unexpected promptitude of action in the king. They surrendered the obnoxious bill, with its proposer, one Thomas Haxey, and with great humility made excuse that they never designed to give offence to his Majesty, nor to interfere with his household or attendants, knowing well that such things do not belong to them, but to the king alone, but merely to draw his attention, that he might act therein as should please him best. The king forgave these pitiful suppliants, but Haxey was adjudged in Parliament to suffer death as a traitor. As, however, he was a clerk,[381] the Archbishop of Canterbury, at the head of the prelates, obtained of the king that his life might be spared, and that they might have the custody of his person, protesting that this was not claimed by way of right, but merely of the king's grace.[382]

This was an open defiance of Parliament, and a declaration of arbitrary power. For it would be impossible to contend that, after the repeated instances of control over public expenditure by the commons since the fiftieth of Edward III, this principle was novel and unauthorized by the constitution, or that the right of free speech demanded by them in every Parliament was not a real and indisputable privilege. The king, however, was completely successful, and, having proved the feebleness of the commons, fell next upon those he more dreaded. By a skilful piece of treachery he seized the Duke of Gloucester, and spread consternation among all his party. A Parliament was summoned, in which the only struggle was to outdo the king's wishes, and thus to efface their former transgressions.[383] Gloucester, who had been murdered at Calais, was attainted after his death; Arundel was beheaded, his brother, the Archbishop of Canterbury, deposed and banished, Warwick and Cobham sent beyond sea. The commission of the tenth, the proceedings in Parliament of

[381] The Church would perhaps have interfered in behalf of Haxey if he had only received the tonsure. But it seems that he was actually in orders; for the record calls him Sir Thomas Haxey, a title at that time regularly given to the parson of a parish. If this be so, it is a remarkable authority for the clergy's capacity of sitting in Parliament.

[382] "Rot. Parl.," 20 R. II, p. 339. In Henry IV's first Parliament the commons petitioned for Haxey's restoration, and truly say that his sentence was en aneantissement des custumes de la commune (p. 434). His judgment was reversed by both Houses, as having passed de volonté du roy Richard en contre droit et la course quel avoit este devant en parlement (p. 480). There can be no doubt with any man who looks attentively at the passages relative to Haxey that he was a member of Parliament, though this was questioned a few years ago by the committee of the House of Commons, who made a report on the right of the clergy to be elected; a right which, I am inclined to believe, did exist down to the Reformation, as the grounds alleged for Nowell's expulsion in the first of Mary, besides this instance of Haxey, conspire to prove, though it has since been lost by disuse.

[383] This assembly, if we may trust the anonymous author of the "Life of Richard II," published by Hearne, was surrounded by the king's troops (p. 133).

the eleventh year of the king, were annulled. The answers of the judges to the questions put at Nottingham, which had been punished with death and exile, were pronounced by Parliament to be just and legal. It was declared high treason to procure the repeal of any judgment against persons therein impeached. Their issue male were disabled from ever sitting in Parliament or holding place in council. These violent ordinances, as if the precedent they were then overturning had not shielded itself with the same sanction, were sworn to by Parliament upon the cross of Canterbury, and confirmed by a national oath, with the penalty of excommunication denounced against its infringers. Of those recorded to have bound themselves by this adjuration to Richard, far the greater part had touched the same relics for Gloucester and Arundel ten years before, and two years afterward swore allegiance to Henry of Lancaster.[884]

In the fervour of prosecution this Parliament could hardly go beyond that whose acts they were annulling; and each is alike unworthy to be remembered in the way of precedent. But the leaders of the former, though vindictive and turbulent, had a concern for the public interest; and, after punishing their enemies, left the government upon its right foundation. In this all regard for liberty was extinct; and the commons set the dangerous precedent of granting the king a subsidy upon wool during his life. Their remarkable act of severity was accompanied by another, less unexampled, but, as it proved, of more ruinous tendency. The petitions of the commons not having been answered during the session, which they were always anxious to conclude, a commission was granted for twelve peers and six commoners to sit after the dissolution, and "examine, answer, and fully determine, as well all the said petitions, and the matters therein comprised, as all other matters and things moved in the king's presence, and all things incident thereto not yet determined, as shall seem best to them."[885] The "other matters" mentioned above were, I suppose, private petitions to the king's council in Parliament, which had been frequently despatched after a dissolution. For in the statute which establishes this commission, 21 Richard II, c. 16, no powers are committed but those of examining petitions: which, if it does not confirm the charge afterward alleged against Richard, of falsifying the Parliament roll, must at least be considered as limiting and explaining the terms of the latter. Such a trust had been committed to some lords of the council eight years before, in very peaceful times, and it was even requested that the same might be done in future Parliaments.[886] But it is obvious what a latitude this gave to a prevailing faction. These eighteen commis-

[884] "Rot. Parl.," 21 R. II, p. 347. [885] 21 R. II, p. 369. [886] 13 R. II, p. 256.

sioners, or some of them (for there were some who disliked the turn of affairs), usurped the full rights of the legislature, which undoubtedly were only delegated in respect of business already commenced.[387] They imposed a perpetual oath on prelates and lords for all time to come, to be taken before obtaining livery of their lands, that they would maintain the statutes and ordinances made by this Parliament, or "afterward by the lords and knights having power committed to them by the same." They declared it high treason to disobey their ordinances. They annulled the patents of the Dukes of Hereford and Norfolk, and adjudged Henry Bowet, the former's chaplain, who had advised him to petition for his inheritance, to the penalties of treason.[388] And thus, having obtained a revenue for life, and the power of Parliament being notoriously usurped by a knot of his creatures, the king was little likely to meet his people again, and became as truly absolute as his ambition could require.

It had been necessary for this purpose to subjugate the ancient nobility. For the English constitution gave them such paramount rights that it was impossible either to make them surrender their country's freedom or to destroy it without their consent. But several of the chief men had fallen or were involved with the party of Gloucester. Two who, having once belonged to it, had lately plunged into the depths of infamy to ruin their former friends, were still perfectly obnoxious to the king, who never forgave their original sin. These two, Henry of Bolingbroke, Earl of Derby, and Mowbray, Earl of Nottingham, now Dukes of Hereford and Norfolk, the most powerful of the remaining nobility, were, by a singular conjuncture, thrown, as it were, at the king's feet. Of the political mysteries which this reign affords, none is more inexplicable than the quarrel of these peers. In the Parliament at Shrewsbury, in 1398, Hereford was called upon by the king to relate what had passed between the Duke of Norfolk and himself in slander of his Majesty. He detailed a pretty long and not improbable conversation, in which Norfolk had asserted the king's intention of

[387] This proceeding was made one of the articles of charge against Richard in the following terms: Item, in parliamento ultimo celebrato apud Salopiam, idem rex proponens opprimere populum suum procuravit subtiliter et fecit concedi, quod potestas parliamenti de consensu omnium statuum regni sui remaneret apud quasdam certas personas ad terminandum, dissoluto parliamento, certas petitiones in eodem parliamento porrectas protunc minimè expeditas. Cujus concessionis colore personæ sic deputatæ processerunt ad alia generaliter parliamentum illud tangentia; et hoc de voluntate regis; in derogationem statûs parliamenti, et in magnum incommodum totius regni et perniciosum exemplum. Et ut super factis eorum hujusmodi aliquem colorem et auctoritatem viderentur habere, rex fecit rotulos parliamenti pro voto suo mutari et deleri, contra effectum consensionis prædictæ. ("Rot. Parl.," 1 H. IV, vol. iii, p. 418.) Whether the last accusation, of altering the parliamentary roll, be true or not, there is enough left in it to prove everything I have asserted in the text. From this it is sufficiently manifest how unfairly Carte and Hume have drawn a parallel between this self-deputed legislative commission and that appointed by Parliament to reform the administration eleven years before.

[388] "Rot. Parl.," pp. 372, 385.

destroying them both for their old offence in impeaching his ministers. Norfolk had only to deny the charge and throw his gauntlet at the accuser. It was referred to the eighteen commissioners who sat after the dissolution, and a trial by combat was awarded. But when this, after many delays, was about to take place at Coventry, Richard interfered and settled the dispute by condemning Hereford to banishment for ten years and Norfolk for life. This strange determination, which treated both as guilty where only one could be so, seems to admit no other solution than the king's desire to rid himself of two peers whom he feared and hated at a blow. But it is difficult to understand by what means he drew the crafty Bolingbroke into his snare.[389] However this might have been, he now threw away all appearance of moderate government. The indignities he had suffered in the eleventh year of his reign were still at his heart, a desire to revenge which seems to have been the mainspring of his conduct. Though a general pardon of those proceedings had been granted, not only at the time, but in his own last Parliament, he made use of them as a pretence to extort money from seventeen counties, to whom he imputed a share in the rebellion. He compelled men to confess under their seals that they had been guilty of treason, and to give blank obligations, which his officers filled up with large sums.[390] Upon the death of the Duke of Lancaster, who had passively complied throughout all these transactions, Richard refused livery of his inheritance to Hereford, whose exile implied no crime, and who had letters-patent enabling him to make his attorney for that purpose during its continuance. In short, his government for nearly two years was altogether tyrannical; and, upon the same principles that cost James II his throne, it was unquestionably far more necessary, unless our fathers would have abandoned all thought of liberty, to expel Richard II. Far be it from us to extenuate the treachery of the Percies toward this unhappy prince, or the cruel circumstances of his death, or in any way to extol either his successor or the chief men of that time, most of whom were ambitious and faithless; but after such long experience of the king's arbitrary, dissembling, and revengeful temper, I see no other safe course, in the actual state of the constitution, than what the nation concurred in pursuing.

[389] Besides the contemporary historians, we may read a full narrative of these proceedings in the "Rolls of Parliament," vol. iii, p. 382. It appears that Mowbray was the most offending party, since, independently of Hereford's accusation, he is charged with openly maintaining the appeals made in the false Parliament of the eleventh of the king. But the banishment of his accuser was wholly unjustifiable by any motives that we can discover. It is strange that Carte should express surprise at the sentence upon the Duke of Norfolk, while he seems to consider that upon Hereford as very equitable. But he viewed the whole of this reign, and of those that ensued, with the jaundiced eye of Jacobitism.

[390] "Rot. Parl.," 1 H. IV, pp. 420, 426; Walsingham, pp. 353, 357; Otterburn, p. 199; "Vita Ric. II," p. 147.

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The reign of Richard II is, in a constitutional light, the most interesting part of our earlier history, and it has been the most imperfectly written. Some have misrepresented the truth through prejudice, and others through carelessness. It is only to be understood, and, indeed, there are great difficulties in the way of understanding it at all, by a perusal of the rolls of Parliament, with some assistance from the contemporary historians, Walsingham, Knyghton, the anonymous biographer published by Hearne, and Froissart. These, I must remark, except occasionally the last, are extremely hostile to Richard; and although we are far from being bound to acquiesce in their opinions, it is at least unwarrantable in modern writers to sprinkle their margins with references to such authority in support of positions decidedly opposite.[391]

The revolution which elevated Henry IV to the throne was certainly so far accomplished by force that the king was in captivity, and those who might still adhere to him in no condition to support his authority. But the sincere concurrence which most of the prelates and nobility, with the mass of the people, gave to changes that could not have been otherwise effected by one so unprovided with foreign support as Henry, proves this revolution to have been, if not an indispensable, yet a national act, and should prevent our considering the Lancastrian kings as usurpers of the throne. Nothing, indeed, looks so much like usurpation in the whole transaction as Henry's remarkable challenge of the crown, insinuating, though not avowing, as Hume has justly animadverted upon it, a false and ridiculous title by right line of descent, and one equally unwarrantable by conquest. The course of proceedings is worthy of notice. As the renunciation of Richard might well pass for the effect of compulsion, there was a strong reason for propping up its instability by a solemn deposition from the throne, founded upon specific charges of misgovernment. Again, as the right of dethroning a monarch was nowhere found in the law, it was equally requisite to support this assumption of power by an actual abdication. But as neither one nor the other filled up the Duke of Lancaster's wishes, who was not contented with owing a crown to election, nor seemed altogether to account for the exclusion of the house of March, he devised this claim, which was preferred in the vacancy of the throne, Richard's cession having been read and approved in Parliament, and the sentence of deposition, "out of abundant caution, and to remove all scruple," solemnly passed

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[400] "Rot. Parl.," vol. iv, p. 216.

ment, with advice of the judges and others learned in the law, that the said subsidy was at all events to be collected and levied for the king's use, notwithstanding any conditions in the grant of the said subsidy contained." [401] The commons, however, in making the grant of a fresh subsidy in this Parliament, renewed their former conditions, with the addition of another, that "it ne no part thereof be beset ne dispensed to no other use, but only in and for the defense of the said roialme." [402]

2. The right of granting supplies would have been very incomplete had it not been accompanied with that of directing their application. The principle of appropriating public moneys began, as we have seen, in the minority of Richard, and was among the best fruits of that period. It was steadily maintained under the new dynasty. The Parliament of 6 Henry IV granted two fifteenths and two tenths, with a tax on skins and wools, on condition that it should be expended in the defence of the kingdom, and not otherwise, as Thomas Lord Furnival and Sir John Pelham, ordained treasurers of war for this Parliament, to receive the said subsidies, shall account and answer to the commons at the next Parliament. These treasurers were sworn in Parliament to execute their trusts.[403] A similar precaution was adopted in the next session.[404]

3. The commons made a bold attempt in the second year of Henry IV to give the strongest security to their claims of redress, by inverting the usual course of parliamentary proceedings. It was usual to answer their petitions on the last day of the session, which put an end to all further discussion upon them, and prevented their making the redress of grievances a necessary condition of supply. They now requested that an answer might be given before they made their grant of subsidy. This was one of the articles which Richard II's judges had declared it high treason to attempt. Henry was not inclined to make a concession which would virtually have removed the chief impediment to the ascendency of Parliament. He first said that he would consult with the lords, and answer according to their advice. On the last day of the session the commons were informed that "it had never been known in the time of his ancestors that they should have their petitions answered before they had done all their business in Parliament, whether of granting money or any other concern; wherefore the king will not alter the good customs and usages of ancient times." [405]

Notwithstanding the just views these Parliaments appear generally to have entertained of their power over the public purse, that of the third of Henry V followed a precedent from the worst

[401] "Rot. Parl.," vol. iv, p. 301.
[402] Id., p. 302.
[403] Id., vol. iii, p. 546.
[404] Id., p. 568.
[405] Id., p. 453.

times of Richard II, by granting the king a subsidy on wool and leather during his life.[406] This, a historian tells us, Henry IV had vainly laboured to obtain;[407] but the taking of Harfleur intoxicated the English with new dreams of conquest in France, which their good sense and constitutional jealousy were not firm enough to resist. The continued expenses of the war, however, prevented this grant from becoming so dangerous as it might have been in a season of tranquility. Henry V, like his father, convoked Parliament almost in every year of his reign.

4. It had long been out of all question that the legislature consisted of the king, lords, and commons; or, in stricter language, that the king could not make or repeal statutes without the consent of Parliament. But this fundamental maxim was still frequently defeated by various acts of evasion or violence; which, though protested against as illegal, it was a difficult task to prevent. The king sometimes exerted a power of suspending the observance of statutes, as in the ninth of Richard II, when a petition that all statutes might be confirmed is granted, with an exception as to one passed in the last Parliament, forbidding the judges to take fees, or give counsel in cases where the king was a party; which, "because it was too severe and needs declaration, the king would have of no effect till it should be declared in Parliament."[408] The apprehension of the dispensing prerogative and sense of its illegality are manifested by the wary terms wherein the commons, in one of Richard's Parliaments, "assent that the king make such sufferance respecting the statute of provisors as shall seem reasonable to him, so that the said statute be not repealed; and, moreover, that the commons may disagree thereto at the next Parliament, and resort to the statute"; with a protestation that this assent, which is a novelty and never done before, shall not be drawn into precedent, praying the king that this protestation may be entered on the roll of Parliament.[409] A petition, in one of Henry IV's Parliaments, to limit the number of attorneys, and forbid filazers and prothonotaries from practising, having been answered favourably as to the first point, we find a marginal entry in the roll that the prince and council had respited the execution of this act.[410]

The dispensing power, as exercised in favour of individuals, is quite of a different character from this general suspension of statutes, but indirectly weakens the sovereignty of the legislature. This power was exerted, and even recognised, throughout all the reigns of the Plantagenets. In the first of Henry V

[406] Id., vol. iv, p. 63.
[407] Walsingham, p. 379.
[408] Walsingham, p. 210. Ruffhead observes in the margin upon this statute (8 R. II, c. 3) that it is repealed, but does not take notice what sort of repeal it had.
[409] 15 R. II, p. 285. See, too, 16 R. II, p. 301, where the same power is renewed in H. IV's Parliaments.
[410] 13 H. IV, p. 643.

the commons pray that the statute for driving aliens out of the kingdom be executed. The king assents, saving his prerogative and his right of dispensing with it when he pleased. To which the commons replied that their intention was never otherwise, nor, by God's help, ever should be. At the same time one Rees ap Thomas petitions the king to modify or dispense with the statute prohibiting Welshmen from purchasing lands in England, or the English towns in Wales, which the king grants. In the same Parliament the commons pray that no grant or protection be made to any one in contravention of the statute of provisors, saving the king's prerogative. He merely answers, "Let the statutes be observed," evading any allusion to his dispensing power.[411]

It has been observed, under the reign of Edward III, that the practice of leaving statutes to be drawn up by the judges, from the petition and answer jointly, after a dissolution of Parliament, presented an opportunity of falsifying the intention of the legislature, whereof advantage was often taken. Some very remarkable instances of this fraud occurred in the succeeding reigns.

An ordinance was put upon the roll of Parliament, in the fifth of Richard II, empowering sheriffs of counties to arrest preachers of heresy and their abettors, and detain them in prison till they should justify themselves before the Church. This was introduced into the statutes of the year, but the assent of lords and commons is not expressed. In the next Parliament the commons, reciting this ordinance, declare that it was never assented to or granted by them, but what had been proposed in this matter was without their concurrence (that is, as I conceive, had been rejected by them), and pray that this statute be annulled; for it was never their intent to bind themselves or their descendants to the bishops more than their ancestors had been bound in times past. The king returned an answer, agreeing to this petition. Nevertheless, the pretended statute was untouched, and remains still among our laws;[412] unrepealed, except by desuetude, and by inference from the acts of much later times.

This commendable reluctance of the commons to let the clergy forge chains for them produced, as there is much appearance, a similar violation of their legislative rights in the next reign. The statute against heresy in the second of Henry IV is not grounded upon any petition of the commons, but only upon one of the

[411] "Rot. Parl.," v. 4 H. V, pp. 6, 9.

[412] 5 R. II, stat. 2, c. 5; "Rot. Parl.," 6 R. II, p. 141. Some other instances of the commons attempting to prevent these unfair practices are adduced by Ruffhead, in his preface to the statutes, and in Prynne's preface to Cotton's "Abridgment of the Records." The act 13 R. II, stat. 1, c. 15, that the king's castles and jails which had been separated from the body of the adjoining counties should be reunited to them, is not founded upon any petition that appears on the roll; and probably, by making search, other instances equally flagrant might be discovered.

clergy. It is said to be enacted by consent of the lords, but no notice is taken of the lower House in the Parliament roll, though the statute reciting the petition asserts the commons to have joined in it.[413] The petition and the statute are both in Latin, which is unusual in the laws of this time. In a subsequent petition of the commons this act is styled "the statute made in the second year of your Majesty's reign at the request of the prelates and clergy of your kingdom"; which affords a presumption that it had no regular assent of Parliament.[414] And the spirit of the commons during this whole reign being remarkably hostile to the Church, it would have been hardly possible to obtain their consent to so penal a law against heresy. Several of their petitions seem designed indirectly to weaken its efficacy.[415]

These infringements of their most essential right were resisted by the commons in various ways, according to the measure of their power. In the fifth of Richard II they request the lords to let them see a certain ordinance before it is engrossed.[416] At another time they procured some of their own members, as well as peers, to be present at engrossing the roll. At length they spoke out unequivocally in a memorable petition which, besides its intrinsic importance, is deserving of notice as the earliest instance in which the House of Commons adopted the English language. I shall present its venerable orthography without change:

"Oure soverain lord, youre humble and trewe lieges that ben come for the comune of youre lond bysechyn onto youre rizt riztwesnesse, That so as hit hath ever be thair libte and fredom, that thar sholde no statut no lawe be made offlasse than theye yaf therto their assent; consideringe that the comune of youre lond, the whiche that is, and ever hath be, a membre of youre parlemente, ben as well assenters as peticioners, that fro this tyme foreward, by compleynte of the comune of any myschief axkynge remedie by mouthe of their speker for the comune, other ellys by petition writen, that ther never be no lawe made theruppon, and engrossed as statut and lawe, nother by addicions, nother by diminucions, by no manner of terme ne termes, the whiche that sholde chaunge the sentence, and the entente axked by the speker mouthe, or the petitions beforesaid yeven up yn writyng by the manere forsaid, withoute assente of the forsaid

[413] There had been, however, a petition of the commons on the same subject, expressed in very general terms, on which this terrible superstructure might artfully be raised (p. 474).

[414] "Rot. Parl.," 6 R. II, p. 626.

[415] We find a remarkable petition in 8 H. IV, professedly aimed against the Lollards, but intended, as I strongly suspect, in their favour. It condemns persons preaching against the Catholic faith or sacraments to imprisonment till the next Parliament, where they were to abide such judgment as should be rendered by the king and peers of the realm. This seems to supersede the burning statute of 2 H. IV, and the spiritual cognizance of heresy. ("Rot. Parl.," p. 583. See, too, p. 626.) The petition was expressly granted, but the clergy, I suppose, prevented its appearing on the statute roll.

[416] "Rot. Parl.," vol. iii, p. 102.

comune. Consideringe, oure soverain lord, that it is not in no wyse the entente of youre comunes, zif yet be so that they axke you by spekyng, or by writyng, two thynges or three, or as manye as theym lust: But that ever it stande in the fredom of youre hie regalie, to graunte whiche of thoo that you lust, and to werune the remanent.

"The kyng of his grace especial graunteth that fro hensforth nothyng be enacted to the peticions of his comune that be contrarie of hir askyng, wharby they shuld be bounde withoute their assent. Savyng alwey to our liege lord his real prerogatif, to graunte and denye what him lust of their petitions and askynges aforesaid." [417]

Notwithstanding the fulness of this assent to so important a petition, we find no vestige of either among the statutes, and the whole transaction is unnoticed by those historians who have not looked into our original records. If the compilers of the statute-roll were able to keep out of it the very provision that was intended to check their fraudulent machinations, it was in vain to hope for redress without altering the established practice in this respect; and, indeed, where there was no design to falsify the roll it was impossible to draw up statutes which should be, in truth, the acts of the whole legislature, so long as the king continued to grant petitions in part, and to ingraft new matter upon them. Such was still the case till the commons hit upon an effectual expedient for screening themselves against these encroachments, which has lasted without alteration to the present day. This was the introduction of complete statutes under the name of bills, instead of the old petitions; and these containing the royal assent and the whole form of a law, it became, though not quite immediately,[418] a constant principle that the king must admit or reject them without qualification. This alteration, which wrought an extraordinary effect on the character of our constitution, was gradually introduced in Henry VI's reign.[419]

[417] "Rot Parl.," vol. iv, p. 22. It is curious that the authors of the "Parliamentary History" say that the roll of this Parliament is lost, and consequently suppress altogether this important petition. Instead of which they give, as their fashion is, impertinent speeches out of Holingshed, which are certainly not genuine, and would be of no value if they were so.

[418] Henry VI and Edward IV in some cases passed bills with sundry provisions annexed by themselves. Thus the act for resumption of grants, 4 E. IV, was encumbered with 289 clauses in favour of so many persons whom the king meant to exempt from its operation; and the same was done in other acts of the same description. ("Rot. Parl.," vol. v, p. 517.)

[419] The variations of each statute, as now printed, from the parliamentary roll, whether in form or substance, are noticed in Cotton's "Abridgment." It may be worth while to consult the preface to Ruffhead's edition of the statutes, where this subject is treated at some length.

Perhaps the triple division of our legislature may be dated from this innovation. For as it is impossible to deny that, while the king promulgated a statute founded upon a mere petition, he was himself the real legislator, so I think it is equally fair to assert, notwithstanding the former preamble of our statutes, that laws brought into either House of Parliament in a perfect shape, and receiving first the assent of lords and commons, and finally that of the king, who has no power to modify them, must be deemed to proceed, and derive their effi-

From the first years of Henry V, though not, I think, earlier, the commons began to concern themselves with the petitions of individuals to the lords or council. The nature of the jurisdiction exercised by the latter will be treated more fully hereafter; it is only necessary to mention in this place that many of the requests preferred to them were such as could not be granted without transcending the boundaries of law. A just inquietude as to the encroachments of the king's council had long been manifested by the commons; and finding remonstrances ineffectual, they took measures for preventing such usurpations of legislative power by introducing their own consent to private petitions. These were now presented by the hands of the commons, and in very many instances passed in the form of statutes with the express assent of all parts of the legislature. Such was the origin of private bills, which occupy the greater part of the rolls in Henry V and VI's Parliament. The commons once made an ineffectual endeavour to have their consent to all petitions presented to the council in Parliament rendered necessary by law; if I rightly apprehend the meaning of the roll in this place, which seems obscure or corrupt.[420]

5. If the strength of the commons had lain merely in the weakness of the crown, it might be inferred that such harassing interference with the administration of affairs as the youthful and frivolous Richard was compelled to endure would have been sternly repelled by his experienced successor. But, on the contrary, the spirit of Richard might have rejoiced to see that his mortal enemy suffered as hard usage at the hands of Parliament as himself. After a few years the government of Henry became extremely unpopular. Perhaps his dissensions with the great family of Percy, which had placed him on the throne, and was regarded with partiality by the people,[421] chiefly contributed to this alienation of their attachment. The commons requested, in the fifth of his reign, that certain persons might be removed from the court; the lords concurred in displacing four of these, one being the king's confessor. Henry came down to Parliament and excused these four persons, as knowing no special cause why they should be removed; yet, well understanding that what the lords and commons should ordain would be for his and his kingdom's interest, and therefore anxious to conform himself to their wishes, consented to the said ordinance, and charged

cacy, from the joint concurrence of all the three. It is said, indeed, at a much earlier time, that le ley de la terre est fait en parlement par le roi, et les seigneurs espirituels et temporels, et tout la communauté du royaume. ("Rot. Parl.," vol. iii, p. 293.) But this, I must allow, was in the violent session of 11 Ric. II, the constitutional authority of which is not to be highly prized.

[420] 8 H. V, vol. iv, p. 127.

[421] The House of Commons thanked the king for pardoning Northumberland, whom, as it proved, he had just cause to suspect. (5 H. IV, p. 525.)

the persons in question to leave his palace, adding that he would do as much by any other about his person whom he should find to have incurred the ill affection of his people.[422] It was in the same session that the Archbishop of Canterbury was commanded to declare before the lords the king's intention respecting his administration, allowing that some things had been done amiss in his court and household; and therefore, wishing to conform to the will of God and laws of the land, protested that he would let in future no letters of signet or privy seal go in disturbance of law, beseeched the lords to put his household in order, so that every one might be paid, and declared that the money granted by the commons for the war should be received by treasurers appointed in Parliament, and disbursed by them for no other purpose, unless in case of rebellion. At the request of the commons he named the members of his privy council; and did the same, with some variation of persons, two years afterward. These, though not nominated with the express consent, seem to have had the approbation of the commons, for a subsidy is granted in 7 Henry IV, among other causes, for "the great trust that the commons have in the lords lately chosen and ordained to be of the king's continual council, that there shall be better management than heretofore."[423]

In the sixth year of Henry the Parliament, which Sir E. Coke derides as unlearned because lawyers were excluded from it, proceeded to a resumption of grants and a prohibition of alienating the ancient inheritance of the crown without consent of Parliament, in order to ease the commons of taxes, and that the king might live on his own.[424] This was a favourite though rather chimerical project. In a later Parliament it was requested that the king would take his council's advice how to keep within his own revenue; he answered that he would willingly oomply as soon as it should be in his power.[425]

But no Parliament came near, in the number and boldness of its demands, to that held in the eighth year of Henry IV. The commons presented thirty-one articles, none of which the king ventured to refuse, though pressing very severely upon his prerogative. He was to name sixteen counsellors, by whose advice he was solely to be guided, none of them to be dismissed without conviction of misdemeanour. The chancellor and privy seal to pass no grants or other matter contrary to law. Any persons about the court stirring up the king or queen's minds against their subjects, and duly convicted thereof, to lose their offices and be fined. The king's ordinary revenue was wholly appropriated to his household and the payment of his debts; no

[422] 5 H. IV, p. 595.
[423] "Rot. Parl.," iii, pp. 529, 568, 573.
[424] "Rot. Parl.," vol. iii, p. 547.
[425] 13 H. IV, p. 624.

grant of wardship or other profit to be made thereout, nor any forfeiture to be pardoned. The king, "considering the wise government of other Christian princes, and conforming himself thereto," was to assign two days in the week for petitions, "it being an honourable and necessary thing that his lieges, who desired to petition him, should be heard." No judicial officer, nor any in the revenue or household, to enjoy his place for life or term of years. No petition to be presented to the king, by any of his household, at times when the council were not sitting. The council to determine nothing cognizable at common law, unless for a reasonable cause and with consent of the judges. The statutes regulating purveyance were affirmed—abuses of various kinds in the council and in courts of justice enumerated and forbidden—elections of knights for counties put under regulation. The council and officers of state were sworn to observe the common law and all statutes, those especially just enacted.[426]

It must strike every reader that these provisions were of themselves a noble fabric of constitutional liberty, and hardly perhaps inferior to the petition of right under Charles I. We can not account for the submission of Henry to conditions far more derogatory than ever were imposed on Richard, because the secret politics of his reign are very imperfectly understood. Toward its close he manifested more vigour. The speaker, Sir Thomas Chaucer, having made the usual petition for liberty of speech, the king answered that he might speak as others had done in the time of his (Henry's) ancestors and his own, but not otherwise; for he would by no means have any innovation, but be as much at his liberty as any of his ancestors had ever been. Some time after he sent a message to the commons, complaining of a law passed at the last Parliament infringing his liberty and prerogative, which he requested their consent to repeal. To this the commons agreed, and received the king's thanks, who declared at the same time that he would keep as much freedom and prerogative as any of his ancestors. It does not appear what was the particular subject of complaint; but there had been much of the same remonstrating spirit in the last Parliament that was manifested on preceding occasions. The commons, however, for reasons we can not explain, were rather dismayed. Before their dissolution they petition the king that, whereas he was reported to be offended at some of his subjects in this and in the preceding Parliament, he would openly declare that he held them all for loyal subjects. Henry granted this "of his special grace"; and thus concluded his reign more triumphantly with respect to his domestic battles than he had gone through it.[427]

Power deemed to be ill gotten is naturally precarious; and

[426] "Rot. Parl.," 8 H. IV, p. 585. [427] 13 H. IV, pp. 648, 658.

the instance of Henry IV has been well quoted to prove that public liberty flourishes with a bad title in the sovereign. None of our kings seem to have been less beloved; and, indeed, he had little claim to affection. But what men denied to the reigning king they poured in full measure upon the heir of his throne. The virtues of the Prince of Wales are almost invidiously eulogized by those Parliaments who treat harshly his father;[428] and these records afford a strong presumption that some early petulance or riot has been much exaggerated by the vulgar minds of our chroniclers. One can scarcely understand at least that a prince who was three years engaged in quelling the dangerous insurrection of Glendower, and who in the latter time of his father's reign presided at the council, was so lost in a cloud of low debauchery as common fame represents.[429] Loved he certainly was throughout his life, as so intrepid, affable, and generous a temper well deserved; and this sentiment was heightened to admiration by successes still more rapid and dazzling than those of Edward III. During his reign there scarcely appears any vestige of dissatisfaction in Parliament—a circumstance very honourable, whether we ascribe it to the justice of his administration or to the affection of his people. Perhaps two exceptions, though they are rather one in spirit, might be made: the first, a petition to the Duke of Gloucester, then holding Parliament as guardian of England, that he would move the king and queen to return, as speedily as might please them, in relief and comfort of the commons;[430] the second, a request that their petitions might not be sent to the king beyond sea, but altogether determined "within this kingdom of England, during this Parliament," and that this ordinance might be of force in all future Parliaments to be held in England.[431] This prayer, to which the guardian declined to accede, evidently sprang from the apprehensions, excited in their minds by the Treaty of Troyes, that England might become a province of the French crown, which led them to obtain a renewal of the statute of Edward III, declaring the independence of this kingdom.[432]

It has been seen already that even Edward III consulted his Parliament upon the expediency of negotiations for peace, though at that time the commons had not acquired boldness enough to tender their advice. . In Richard II's reign they answered to a similar proposition with a little more confidence, that the dangers each way were so considerable they dared not decide, though an honourable peace would be the greatest comfort they could

[428] "Rot. Parl.," vol. iii, pp. 549, 568, 574, 611.

[429] This passage was written before I was aware that the same opinion had been elaborately maintained by Mr. Luders, in one of his valuable essays upon points of constitutional history.

[430] "Rot. Parl.," 8 H. V, vol. iv, p. 125.

[431] P. 128.

[432] P. 130.

have, and concluded by hoping that the king would not engage to do homage for Calais or the conquered country.[433] The Parliament of the tenth of his reign was expressly summoned in order to advise concerning the king's intended expedition beyond sea—a great council, which had previously been assembled at Oxford, having declared their incompetence to consent to this measure without the advice of Parliament.[434] Yet a few years afterward, on a similar reference, the commons rather declined to give any opinion.[435] They confirmed the league of Henry V with the Emperor Sigismund;[436] and the Treaty of Troyes, which was so fundamentally to change the situation of Henry and his successors, obtained, as it evidently required, the sanction of both Houses of Parliament.[437] These precedents conspiring with the weakness of the executive government, in the minority of Henry VI, to fling an increase of influence into the scale of the commons, they made their concurrence necessary to all important business both of a foreign and domestic nature. Thus commissioners were appointed to treat of the deliverance of the King of Scots, the Duchesses of Bedford and Gloucester were made denizens, and mediators were appointed to reconcile the Dukes of Gloucester and Burgundy, by authority of the three estates assembled in Parliament.[438] Leave was given to the Dukes of Bedford and Gloucester, and others in the king's behalf, to treat of peace with France, by both Houses of Parliament, in pursuance of an article in the Treaty of Troyes, that no treaty should be set on foot with the dauphin without consent of the three estates of both realms.[439] This article was afterward repealed.[440]

Some complaints are made by the commons, even during the first years of Henry's minority, that the king's subjects underwent arbitrary imprisonment, and were vexed by summonses before the council and by the newly invented writ of subpœna out of chancery.[441] But these are not so common as formerly; and so far as the rolls lead us to any inference, there was less injustice committed by the government under Henry VI and his father than at any former period. Wastefulness, indeed, might justly be imputed to the regency, who had scandalously lavished the king's revenue.[442] This ultimately led to an act for resum-

[433] 7 R. II, vol. iii, p. 170.
[434] 7 R. II, p. 215.
[435] 17 R. II, p. 315.
[436] 4 H. V, vol. iv, p. 98.
[437] P. 135.
[438] "Rot. Parl.," 4 H. V, vol. iv, pp. 211, 242, 277.
[439] P. 371.
[440] 23 H. VI, vol. v, p. 102. There is rather a curious instance in 3 H. VI of the jealousy with which the commons regarded any proceedings in Parliament where they were not concerned. A controversy arose between the earls marshal and of Warwick respecting their precedence, founded upon the royal blood of the first, and long possession of the second. In this the commons could not affect to interfere judically; but they found a singular way of meddling, by petitioning the king to confer the dukedom of Norfolk on the earl marshal (vol. iv, p. 273).
[441] "Rot. Parl.," 1 H. VI, p. 189; 3 H. VI, p. 292; 8 H. VI, p. 343.
[442] Vol. v, 18 H. VI, p. 17.

ing all grants since his accession, founded upon a public declaration of the great officers of the crown that his debts amounted to three hundred and seventy-two thousand pounds, and the annual expense of the household to twenty-four thousand pounds, while the ordinary revenue was not more than five thousand pounds.[443]

6. But before this time the sky had begun to darken, and discontent with the actual administration pervaded every rank. The causes of this are familiar—the unpopularity of the king's marriage with Margaret of Anjou, and her impolitic violence in the conduct of affairs, particularly the imputed murder of the people's favourite, the Duke of Gloucester. This provoked an attack upon her own creature, the Duke of Suffolk. Impeachment had lain still, like a sword in the scabbard, since the accession of Henry IV, when the commons, though not preferring formal articles of accusation, had petitioned the king that Justice Rickhill, who had been employed to take the former Duke of Gloucester's confession at Calais, and the lords appellants of Richard II's last Parliament, should be put on their defence before the lords.[444] In Suffolk's case the commons seem to have proceeded by bill of attainder, or at least to have designed the judgment against that minister to be the act of the whole legislature; for they delivered a bill containing articles against him to the lords, with a request that they would pray the king's Majesty to enact that bill in Parliament, and that the said duke might be proceeded against upon the said articles in Parliament according to the law and custom of England. These articles contained charges of high treason, chiefly relating to his conduct in France, which, whether treasonable or not, seems to have been grossly against the honour and advantage of the crown. At a later day the commons presented many other articles of misdemeanour. To the former he made a defence, in presence of the king as well as the lords both spiritual and temporal; and, indeed, the articles of impeachment were directly addressed to the king, which gave him a reasonable pretext to interfere in the judgment. But from apprehension, as it is said, that Suffolk could not escape conviction upon at least some part of these charges, Henry anticipated with no slight irregularity the course of legal trial, and, summoning the peers into a private chamber, informed the Duke of Suffolk, by mouth of his chancellor, that, inasmuch as he had not put himself upon his peerage, but submitted wholly to the royal pleasure, the king, acquitting him of the first articles containing matter of treason, by his own advice and not that of the lords, nor by way of judgment, not being in a place where judgment could be delivered, banished him for five years from his dominions. The lords then present besought the king to let their

[443] 28 H. VI, p. 185.

[444] "Rot. Parl.," vol. iii, pp. 430, 449.

protest appear on record, that neither they nor their posterity might lose their rights of peerage by this precedent. It was justly considered as an arbitrary stretch of prerogative, in order to defeat the privileges of Parliament and screen a favourite minister from punishment. But the course of proceeding by bill of attainder, instead of regular impeachment, was not judiciously chosen by the commons.[445]

7. Privilege of Parliament, an extensive and singular branch of our constitutional law, begins to attract attention under the Lancastrian princes. It is true, indeed, that we can trace long before by records, and may infer with probability as to times whose records have not survived, one considerable immunity—a freedom from arrest for persons transacting the king's business in his national council.[446] Several authorities may be found in Mr. Hatsell's "Precedents," of which one, in the ninth of Edward II, is conclusive.[447] But in those rude times members of Parliament were not always respected by the officers executing legal process, and still less by the violators of law. After several remonstrances, which the crown had evaded,[448] the commons obtained the statute 11 Henry VI, c. 11, for the punishment of such as assault any on their way to the Parliament, giving double damages to the party.[449] They had more difficulty in establishing, notwithstanding the old precedents in their favour, an immunity from all criminal process except in charges of treason, felony, and breach of the peace, which is their present measure of privilege. The truth was that, with a right pretty clearly recognised, as is admitted by the judges in Thorp's case, the House of Commons had no regular compulsory process at their command. In the cases of Lark, servant of a member, in the eighth of Henry VI,[450] and of Clerke, himself a burgess, in the thirty-ninth of the same king,[451] it was thought necessary to affect their release from a civil execution by special acts of Parliament. The commons, in a former instance, endeavoured to make the law general that no members nor their servants might be taken except for treason, felony, and breach of peace; but the king put a negative upon this part of their petition.

The most celebrated, however, of these early cases of privilege is that of Thomas Thorp, speaker of the commons in 31 Henry VI. This person, who was, moreover, a baron of the

[445] "Rot. Parl.," 28 H. VI, vol. v, p. 176.

[446] If this were to rest upon antiquity of precedent, one might be produced that would challenge all competition. In the laws of Ethelbert, the first Christian King of Kent, at the end of the sixth century, we find this provision: "If the king call his people to him (i. e., in the witenagemot), and any one does an injury to one of them, let him pay a fine." (Wilkins, "Leges Anglo-Saxon," p. 2.)

[447] Hatsell, vol. i, p. 12.

[448] "Rot. Parl.," 5 H. IV, p. 541.

[449] The clergy had got a little precedence in this. An act passed 8 H. VI, c. 1, granting privilege from arrest for themselves and servants on their way to convocation.

[450] "Rot. Parl.," vol. iv, p. 357.

[451] Id., vol. v, p. 374.

exchequer, had been imprisoned on an execution at suit of the Duke of York. The commons sent some of their members to complain of a violation of privilege to the king and lords in Parliament, and to demand Thorp's release. It was alleged by the Duke of York's counsel that the trespass done by Thorp was since the beginning of the Parliament, and the judgment thereon given in time of vacation, and not during the sitting. The lords referred the question to the judges, who said, after deliberation, that "they ought not to answer to that question, for it hath not be used aforetyme that the judges should in any wise determine the privilege of this high court of Parliament; for it is so high and so mighty in his nature that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the lords of the Parliament, and not to the justices." They went on, however, after observing that a general writ of supersedeas of all processes upon ground of privilege had not been known, to say that, "if any person that is a member of this high court of Parliament be arrested in such cases as be not for treason, or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests and make an attorney, so that they may have their freedom and liberty freely to intend upon the Parliament."

Notwithstanding this answer of the judges, it was concluded by the lords that Thorp should remain in prison, without regarding the alleged privilege; and the commons were directed in the king's name to proceed "with all goodly haste and speed" to the election of a new speaker. It is curious to observe that the commons, forgetting their grievances, or content to drop them, made such haste and speed according to this command, that they presented a new speaker for approbation the next day.[452]

This case, as has been strongly said, was begotten by the iniquity of the times. The state was verging fast toward civil war; and Thorp, who afterward distinguished himself for the Lancastrian cause, was an inveterate enemy of the Duke of York. That prince seems to have been swayed a little from his usual temper in procuring so unwarrantable a determination. In the reign of Edward IV the commons claimed privilege against any civil suit during the time of their session; but they had recourse, as before, to a particular act of Parliament to obtain a writ of supersedeas in favour of one Atwell, a member, who had been sued. The present law of privilege seems not to have been fully established, or at least effectually maintained, before the reign of Henry VIII.[453]

[452] "Rot. Parl.," vol. v, p. 239; Hatsell's "Precedents," p. 29.

[453] Upon this subject the reader should have recourse to Hatsell's "Precedents," vol. i, chap. 1.

No privilege of the commons can be so fundamental as liberty of speech. This is claimed at the opening of every Parliament by their speaker, and could never be infringed without shaking the ramparts of the constitution. Richard II's attack upon Haxey has been already mentioned as a flagrant evidence of his despotic intentions. No other case occurs until the thirty-third year of Henry VI, when Thomas Young, member for Bristol, complained to the commons that, "for matters by him showed in the House accustomed for the commons in the said Parliaments, he was therefore taken, arrested, and rigorously in open wise led to the Tower of London, and there grievously in great duress long time imprisoned against the said freedom and liberty," with much more to the like effect. The commons transmitted this petition to the lords, and the king "willed that the lords of his council do and provide for the said suppliant as in their discretions shall be thought convenient and reasonable." This imprisonment of Young, however, had happened six years before, in consequence of a motion made by him that, the king then having no issue, the Duke of York might be declared heir-apparent to the crown. In the present session, when the duke was protector, he thought it well timed to prefer his claim to remuneration.[454]

There is a remarkable precedent in the ninth of Henry IV, and perhaps the earliest authority for two eminent maxims of parliamentary law—that the commons possess an exclusive right of originating money bills, and that the king ought not to take notice of matters pending in Parliament. A quarrel broke out between the two Houses upon this ground; and as we have not before seen the commons venture to clash openly with their superiors, the circumstance is for this additional reason worthy of attention. As it has been little noticed, I shall translate the whole record:

"Friday, the second day of December, which was the last day of the Parliament, the commons came before the king and the lords in Parliament, and there, by command of the king, a schedule of indemnity touching a certain altercation moved between the lords and commons was read; and on this it was commanded by our said lord the king that the said schedule should be entered of record in the rolls of Parliament; of which schedule the tenor is as follows: Be it remembered, that on Monday, the 21st day of November, the king our sovereign lord being in the council chamber in the abbey of Gloucester,[455] the lords spiritual and temporal for this present Parliament assembled being then in

[454] "Rot. Parl.," vol. v, p. 337; W. Worcester, p. 475. Mr. Hatsell seems to have overlooked this case, for he mentions that of Strickland, in 1571, as the earliest instance of the crown's interference with freedom of speech in Parliament (vol. i, p. 85).

[455] This Parliament sat at Gloucester.

his presence, a debate took place among them about the state of the kingdom, and its defence to resist the malice of the enemies who on every side prepare to molest the said kingdom and its faithful subjects, and how no man can resist this malice, unless, for the safeguard and defence of his said kingdom, our sovereign lord the king has some notable aid and subsidy granted to him in his present Parliament. And therefore it was demanded of the said lords by way of question what aid would be sufficient and requisite in these circumstances? To which question it was answered by the said lords severally, that, considering the necessity of the king on one side, and the poverty of his people on the other, no less aid could be sufficient than one tenth and a half from cities and towns, and one fifteenth and a half from all other lay persons; and, besides, to grant a continuance of the subsidy on wool, wool-fells, and leather, and of three shillings on the tun (of wine), and twelvepence on the pound (of other merchandise), from Michaelmas next ensuing for two years thenceforth. Whereupon, by command of our said lord the king, a message was sent to the commons of this Parliament to cause a certain number of their body to come before our said lord the king and the lords, in order to hear and report to their companions what they should be commanded by our said lord the king. And upon this the said commons sent into the presence of our said lord the king and the said lords twelve of their companions; to whom, by command of our said lord the king, the said question was declared, with the answer by the said lords severally given to it. Which answer it was the pleasure of our said lord the king that they should report to the rest of their fellows, to the end that they might take the shortest course to comply with the intention of the said lords. Which report being thus made to the said commons, they were greatly disturbed at it, saying and asserting it to be much to the prejudice and derogation of their liberties. And after that our said lord the king had heard this, not willing that anything should be done at present, or in time to come, that might anywise turn against the liberty of the estate for which they are come to Parliament, nor against the liberties of the said lords, wills and grants and declares, by the advice and consent of the said lords, as follows: to wit, that it shall be lawful for the lords to debate together in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it. And in like manner it shall be lawful for the commons, on their part, to debate together concerning the said condition and remedies. Provided always that neither the lords on their part, nor the commons on theirs, do make any report to our said lord the king of any grant granted

by the commons, and agreed to by the lords, nor of the communications of the said grant, before that the said lords and commons are of one accord and agreement in this matter, and then in manner and form accustomed—that is to say, by the mouth of the speaker of the said commons for the time being—to the end that the said lords and commons may have what they desire (avoir puissent leur gree) of our said lord the king. Our said lord the king willing, moreover, by the consent of the said lords, that the communication had in this present Parliament as above be not drawn into precedent in time to come, nor be turned to the prejudice or derogation of the liberty of the estate for which the said commons are now come, neither in this present Parliament nor in any other time to come. But wills that himself and all the other estates should be as free as they were before. Also, the said last day of Parliament, the said speaker prayed our said lord the king, on the part of the said commons, that he would grant the said commons that they should depart in as great liberty as other commons had done before. To which the king answered that this pleased him well, and that at all times it had been his desire." [456]

Every attentive reader will discover this remarkable passage to illustrate several points of constitutional law. For hence it may be perceived—first, that the king was used in those times to be present at debates of the lords, personally advising with them upon the public business; which also appears by many other passages on record; and this practice, I conceive, is not abolished by the king's present declaration, save as to grants of money, which ought to be of the free will of Parliament, and without that fear or influence which the presence of so high a person might create; secondly, that it was already the established law of Parliament that the lords should consent to the commons' grant, and not the commons to the lords'; since it is the inversion of this order whereof the commons complain, and it is said expressly that grants are made by the commons, and agreed to by the lords; thirdly, that the lower House of Parliament is not, in proper language, an estate of the realm, but rather the image and representative of the commons of England; who, being the third estate, with the nobility and clergy make up and constitute the people of this kingdom and liege subjects of the crown.[457]

[456] "Rot. Parl.," vol. iii, p. 611.

[457] A notion is entertained by many people, and not without the authority of some very respectable names, that the king is one of the three estates of the realm, the lords spiritual and temporal forming together the second, as the commons in Parliament do the third. This is contradicted by the general tenor of our ancient records and law-books; and indeed the analogy of other governments ought to have the greatest weight, even if more reason for doubt appeared upon the face of our own authorities. But the instances where the three estates are declared or implied to be the nobility, clergy, and commons, or at least their representatives in Parliament, are too numerous for insertion. This land standeth, says the Chancellor Stillington, in 7

At the next meeting of Parliament, in allusion probably to this disagreement between the Houses, the king told them that the states of Parliament were come together for the common profit of the king and kingdom, and for unanimity's sake and general consent; and therefore he was sure the commons would not attempt nor say anything but what should be fitting and conducive to unanimity, commanding them to meet together and communicate for the public service.[458]

It was not only in money bills that the originating power was supposed to reside in the commons. The course of proceedings in Parliament, as has been seen, from the commencement at least of Edward III's reign, was that the commons presented petitions, which the lords, by themselves, or with the assistance of the council, having duly considered, the sanction of the king was notified or withheld. This was so much according to usage that, on one occasion, when the commons requested the advice of the other House on a matter before them, it was answered that the ancient custom and form of Parliament had ever been for the commons to report their own opinion to the king and lords, and not to the contrary; and the king would have the ancient and laudable usages of Parliament maintained.[459] It is singular that in the terror of innovation the lords did not discover how materially this usage of Parliament took off from their own legislative influence. The rule, however, was not observed in succeeding

Edward IV, by three states, and above that one principal, that is to wit, lords spiritual, lords temporal, and commons, and over that, state royal, as our sovereign lord the king. ("Rot. Parl.," vol. v, p. 622.) Thus, too, it is declared that the Treaty of Staples in 1492 was to be confirmed per tres status regni Angliæ ritè et debitè convocatos, videlicet per prelatos et clerum, nobiles et communitates ejusdem regni. (Rymer, tome xii, p. 508.)

I will not, however, suppress one passage, and the only instance that has occurred in my reading, where the king does appear to have been reckoned among the three estates. The commons say, in the second of Henry IV, that the states of the realm may be compared to a trinity, that is, the king, the lords spiritual and temporal, and the commons. ("Rot. Parl.," vol. iii, p. 459.) In this expression, however, the sense shows that by estates of the realm they meant members, or necessary parts, of the Parliament.

Whitelocke, on the "Parliamentary Writ," vol. ii, p. 43, argues at length that the three estates are king, lords, and commons, which seems to have been a current doctrine among the popular lawyers of the seventeenth century. His reasoning is chiefly grounded on the baronial tenure of bishops, the validity of acts passed against their consent, and other arguments of the same kind, which might go to prove that there are only at present two estates, but can never turn the king into one.

The source of this error is an inattention to the primary sense of the word estate (status), which means an order or condition into which men are classed by the institutions of society. It is only in a secondary, or rather an elliptical application, that it can be referred to their representatives in Parliament or national councils. The lords temporal, indeed, of England are identical with the estate of the nobility; but the House of Commons is not, strictly speaking, the estate of commonalty, to which its members belong, and from which they are deputed. So the whole body of the clergy are, properly speaking, one of the estates, and are described as such in the older authorities (21 Ric. II, "Rot. Parl.," vol. iii, p. 348), though latterly the lords spiritual in Parliament acquired, with less correctness, that appellation. (Hody on "Convocations," p. 426.) The bishops, indeed, may be said, constructively, to represent the whole of the clergy, with whose grievances they are supposed to be best acquainted, and whose rights it is their peculiar duty to defend. And I do not find that the inferior clergy had any other representation in the Cortes of Castile and Aragon, where the ecclesiastical order was always counted among the estates of the realm.

[458] "Rot. Parl.," vol. iii, p. 623.

[459] "Rot. Parl.," 5 R. II, p. 100.

times; bills originated indiscriminately in either House; and, indeed, some acts of Henry V, which do not appear to be grounded on any petition, may be suspected, from the manner of their insertion in the rolls of Parliament, to have been proposed on the king's part to the commons.[460] But there is one manifest instance in the eighteenth of Henry VI, where the king requested the commons to give their authority to such regulations [461] as his council might provide for redressing the abuse of purveyance, to which they assented.

If we are to choose constitutional precedents from seasons of tranquility rather than disturbance, which surely is the only means of preserving justice or consistency, but little intrinsic authority can be given to the following declaration of parliamentary law in the eleventh of Richard II: "In this Parliament" (the roll says) "all the lords as well spiritual and temporal there present claimed as their liberty and privilege, that the great matters moved in this Parliament, and to be moved in other Parliaments for time to come, touching the peers of the land, should be treated, adjudged, and debated according to the course of Parliament, and not by the civil law nor the common law of the land, used in the other lower courts of the kingdom; which claim, liberty, and privileges the king graciously allowed and granted them in full Parliament." [462] It should be remembered that this assertion of paramount privilege was made in very irregular times, when the king was at the mercy of the Duke of Gloucester and his associates, and that it had a view to the immediate object of

[460] Stat. 2 H. V, c. 6-9; 4 H. VI, c. 7.

[461] "Rot. Parl.," vol. v, p. 7. It appears by a case in the "Year Book" of the thirty-third of Henry VI, that, where the lords made only some minor alterations in a bill sent up to them from the commons, even if it related to a grant of money, the custom was not to remand it for their assent to the amendment. (Brooke's "Abridgment": Parliament. 4.) The passage is worth extracting, in order to illustrate the course of proceeding in Parliament at that time. Case fuit que Sir. J. P. fuit attaint de certeyn trespas par acte de Parliament, dont les commons furent assentus, que sil ne vient eins per tiel jour que il forfeytera tiel summe, et les seigneurs done plus longe jour, et le bil nient rebaile al commons arrere; et per Kirby, clerk des roles del Parliament, l'use del Parliament est, que si bil vient primes a les commons, et ils passent ceo, il est use d'endorser ceo en tiel forme, Soit bayle as seigniors; et si les seigniors ne le roy ne alteront le bil, donques est use a liverer ceo al clerke del Parliamente destre enrol saunz endorser ceo. . . . Et si les seigniors volent alter un bil in ceo que poet estoyer ore le bil, ils poyent saunz remandre ceo al commons, come si les commons graunte poundage, pur quatuor ans, et les grantent nisi par deux ans, ceo ne serra rebayle al commons; mes si les commons grauntent nisi pur deux ans, et les seigneurs pur quatre ans, la ceo serra reliver al commons, et en cest case les seigniors doyent faire un sedule de lour intent, ou d'endorser le bil en ceste forme, Les seigneurs ceo assentent pur durer par quatuor ans; et quant les commons ount le bil arrere, et ne volent assenter a ceo, ceo ne poet estre un actre; mes si les commons volent assenter, donques ils indorse leur respons sur le mergent ne basse deins le bil en tiel forme, Les commons sont assentans al sedul des seigniors, a mesme cesty bil annexe, et donques sera bayle ad clerke del Parliament, ut supra. Et si un bil soit primes liver al seigniors, et le bil passe eux, ils ne usont de fayre ascun endorsement, mess de mitter le bil as commons; et donques, si le bil passe les commons, il est use destre issint endorce, Les commons sont assentants; et ceo prove que il ad passe les seigniors devant, et lour assent est a cest passer del seigniors; et ideo cest acte supra nest bon, pur ceo que ne fuit rebaile as commons.

A singular assertion is made in the "Year Book," 21 E. IV, p. 48 (Maynard's edit.), that a subsidy granted by the commons without assent of the peers is good enough. This can not surely have been law at that time.

[462] "Rot. Parl.," vol. iii, p. 244.

justifying their violent proceedings against the opposite party, and taking away the restraint of the common law. It stands as a dangerous rock to be avoided, not a lighthouse to guide us along the channel. The law of Parliament, as determined by regular custom, is incorporated into our constitution; but not so as to warrant an indefinite, uncontrollable assumption of power in any case, least of all in judicial procedure, where the form and the essence of justice are inseparable from each other. And, in fact, this claim of the lords, whatever gloss Sir E. Coke may put upon it, was never intended to bear any relation to the privileges of the lower House. I should not, perhaps, have noticed this passage so strongly if it had not been made the basis of extravagant assertions as to the privileges of Parliament;[463] the spirit of which exaggerations might not be ill adapted to the times wherein Sir E. Coke lived, though I think they produced at several later periods no slight mischief, some consequences of which we may still have to experience.

The want of all judicial authority, either to issue process or to examine witnesses, together with the usual shortness of sessions, deprived the House of Commons of what is now considered one of its most fundamental privileges, the cognizance of disputed elections. Upon a false return by the sheriff, there was no remedy but through the king or his council. Six instances only, I believe, occur, during the reigns of the Plantagenet family, wherein the misconduct or mistake of the sheriff is recorded to have called for a specific animadversion, though it was frequently the ground of general complaint, and even of some statutes. The first is in the twelfth of Edward II, when a petition was presented to the council against a false return for the county of Devon, the petitioner having been duly elected. It was referred to the court of exchequer to summon the sheriff before them.[464] The next occurs in the thirty-sixth of Edward III, when a writ was directed to the sheriff of Lancashire, after the dissolution of Parliament, to inquire at the county court into the validity of the election; and upon his neglect a second writ issued to the justices of the peace to satisfy themselves about this in the best manner they could, and report the truth into chancery. This inquiry after the dissolution was on account of the wages for attendance, to which the knights unduly returned could have no pretence.[465] We find a third case in the seventh of Richard II, when the king took notice that Thomas de Camoys, who was summoned by writ to the House of Peers, had been elected knight for Surrey, and directed the sheriff to return another.[466] In the same year the town of Shaftesbury petitioned the king, lords,

[463] Coke's "Four Institute," p. 15.
[464] Glanvil's "Reports of Elections," edit. 1774, introduction, p. 12.
[465] 4 Prynne, p. 261.
[466] Glanvil's "Reports," ibid., from Prynne.

and commons against a false return of the sheriff of Dorset, and prayed them to order remedy. Nothing further appears respecting this petition.[467] This is the first instance of the commons being noticed in matters of election. But the next case is more material: in the fifth of Henry IV the commons prayed the king and lords in Parliament that, because the writ of summons to Parliament was not sufficiently returned by the sheriff of Rutland, this matter might be examined in Parliament, and in case of default found therein an exemplary punishment might be inflicted; whereupon the lords sent for the sheriff and Oneby, the knight returned, as well as for Thorp, who had been duly elected, and, having examined into the facts of the case, directed the return to be amended, by the insertion of Thorp's name, and committed the sheriff to the Fleet till he should pay a fine at the king's pleasure.[468] The last passage that I can produce is from the roll of 18 Henry VI, where " it is considered by the king, with the advice and assent of the lords spiritual and temporal," that, whereas no knights have been returned for Cambridgeshire, the sheriff shall be directed, by another writ, to hold a court and to proceed to an election, proclaiming that no person shall come armed, nor any tumultuous proceeding take place; something of which sort appears to have obstructed the execution of the first writ. It is to be noticed that the commons are not so much as named in this entry.[469] But several provisions were made by statute under the Lancastrian kings, when seats in Parliament became much more an object of competition than before, to check the partiality of the sheriffs in making undue returns. One act (11 Henry IV, c. 1) gives the justices of assize power to inquire into this matter, and inflicts a penalty of one hundred pounds on the sheriff. Another (6 Henry VI, c. 4) mitigates the rigour of the former, so far as to permit the sheriff or the knights returned by him to traverse the inquests before the justices—that is, to be heard in their own defence, which, it seems, had not been permitted to them. Another (23 Henry VI, c. 14) gives an additional penalty upon false returns to the party aggrieved. These statutes conspire with many other testimonies to manifest the rising importance of the House of Commons, and the eagerness with which gentlemen of landed estates (whatever might be the case in petty boroughs) sought for a share in the national representation.

Whoever may have been the original voters for county representatives, the first statute that regulates their election, so far from limiting the privilege to tenants in capite, appears to place it upon a very large and democratical foundation. For (as I rather conceive, though not without much hesitation), not only

[467] Glanvil's " Reports," ibid., from Prynne.
[468] Glanvil's " Reports," ibid., and " Rot. Parl.," vol. iii, p. 530.
[469] " Rot. Parl.," vol. v, p. 7.

all freeholders, but all persons whatever present at the county court, were declared, or rendered, capable of voting for the knight of their shire. Such at least seems to be the inference from the expressions of 7 Henry IV, c. 15, "all who are there present, as well suitors duly summoned for that cause as others."[470] And this acquires some degree of confirmation from the later statute, 8 Henry VI, c. 7, which, reciting that "elections of knights of shires have now of late been made by very great, outrageous, and excessive number of people dwelling within the same counties, of the which most part was people of small substance and of no value," confines the elective franchise to freeholders of lands or tenements to the value of forty shillings.

The representation of towns in Parliament was founded upon two principles—of consent to public burdens, and of advice in public measures, especially such as related to trade and shipping. Upon both these accounts it was natural for the kings who first summoned them to Parliament, little foreseeing that such half-emancipated burghers would ever clip the loftiest plumes of their prerogative, to make these assemblies numerous, and summon members from every town of consideration in the kingdom. Thus the writ of 23 Edward I directs the sheriffs to cause deputies to be elected to a general council from every city, borough, and trading town. And although the last words are omitted in subsequent writs, yet their spirit was preserved, many towns having constantly returned members to Parliament by regular summonses from the sheriffs, which were no chartered boroughs, nor had apparently any other claim than their populousness or commerce. These are now called boroughs by prescription.[471]

[470] 3 Prynne's "Register," p. 187. This hypothesis, though embraced by Prynne, is, I confess, much opposed to general opinion; and a very respectable living writer treats such an interpretation of the statute 7 H. IV as chimerical. The words cited in the text, "as others," mean only, according to him, suitors not duly summoned. (Heywood on "Elections," vol. i, p. 20.) But, as I presume, the summons to freeholders was by general proclamation; so that it is not easy to perceive what difference there could be between summoned and unsummoned suitors. And if the words are supposed to glance at the private summonses to a few friends, by means of which the sheriffs were accustomed to procure a clandestine election, one can hardly imagine that such persons would be styled "duly summoned." It is not unlikely, however, that these large expressions were inadvertently used, and that they led to that inundation of voters without property which rendered the subsequent act of Henry VI necessary. That of Henry IV had itself been occasioned by an opposite evil, the close election of knights by a few persons in the name of the county.

Yet the consequence of the statute of Henry IV was not to let in too many voters, or to render elections tumultuous, in the largest of English counties, whatever it might be in others. Prynne has published some singular sheriff's indentures for the county of York, all during the interval between the acts of Henry IV and Henry VI, which are sealed by a few persons calling themselves the attorneys of some peers and ladies, who, as far as appears, had solely returned the knights of that shire. (3 Prynne, p. 152.) What degree of weight these anomalous returns ought to possess I leave to the reader.

[471] The majority of prescriptive boroughs have prescriptive corporations, which carry the legal, which is not always the moral, presumption of an original charter. But "many boroughs and towns in England have burgesses by prescription, that never were incorporated." (Ch. J. Hobart in Dungannon Case, Hobart's "Reports," p. 15.) And Mr. Luders thinks, I know not how justly, that in the age of Edward I, which is most to our immediate purpose, "there were not perhaps thirty corporations in

Besides these respectable towns, there were some of a less eminent figure which had writs directed to them as ancient demesnes of the crown. During times of arbitrary taxation the crown had set tallages alike upon its chartered boroughs and upon its tenants in demesne. When parliamentary consent became indispensable, the free tenants in ancient demesne, or rather such of them as inhabited some particular vills, were called to Parliament among the other representatives of the commons. They are usually specified distinctly from the other classes of representatives in grants of subsidies throughout the Parliaments of the first and second Edwards, till, about the beginning of the third's reign, they were confounded with ordinary burgesses.[472] This is the foundation of that particular species of elective franchise incident to what we denominate burgage tenure; which, however, is not confined to the ancient demesne of the crown.[473]

The proper constituents, therefore, of the citizens and burgesses in Parliament appear to have been: 1. All chartered boroughs, whether they derived their privileges from the crown or from a mesne lord, as several in Cornwall did from Richard, King of the Romans.[474] 2. All towns which were the ancient or the actual demesne of the crown. 3. All considerable places, though unincorporated, which could afford to defray the expenses of their representatives, and had a notable interest in the public welfare. But no Parliament ever perfectly corresponded with this theory. The writ was addressed in general terms to the sheriff, requiring him to cause two knights to be elected out of the body of the county, two citizens from every city, and two burgesses from every borough. It rested altogether upon him to determine what towns should exercise this franchise; and it is really incredible, with all the carelessness and ignorance of those times, what frauds the sheriffs ventured to commit in executing this trust. Though Parliaments met almost every year, and there could be no mistake in so notorious a fact, it was the continual practice of sheriffs to omit boroughs that had been in recent habit of electing members, and to return upon the writ that there were no more within their county. Thus in the twelfth of Edward III the sheriff of Wiltshire, after returning two citizens for Salisbury, and burgesses for two boroughs, concludes with these

the kingdom." ("Reports of Elections," vol. i, p. 98.) But I must allow that, in the opinion of many sound lawyers, the representation of unchartered, or at least unincorporated boroughs, was rather a real privilege, and founded upon tenure, than one arising out of their share in public contributions. (Ch. J. Holt in Ashby v. White, 2 Ld. Raymond, 951; Heywood on "Borough Elections," p. 11.) This inquiry is very obscure; and perhaps the more so because the learning directed toward it has more frequently been that of advocates pleading for their clients than of unbiassed antiquaries. If this be kept in view, the lover of constitutional history will find much information in several of the reported cases on controverted elections; particularly those of Tewksbury and Liskeard, in Peckwell's "Reports," vol. i.

[472] Brady on "Boroughs," pp. 75, 80, and 163. Case of Tewksbury, in Peckwell's "Reports," vol. i, p. 178.

[473] Littleton, s. 162, 163.

[474] Brady, p. 97.

words, "There are no other cities or boroughs within my bailiwick." Yet, in fact, eight other towns had sent members to preceding Parliaments. So in the sixth of Edward II the sheriff of Bucks declared that he had no borough within his county except Wycomb, though Wendover, Agmondesham, and Marlow had twice made returns since that king's accession.[475] And from this cause alone it has happened that many towns called boroughs, and having a charter and constitution as such, have never returned members to Parliament; some of which are now among the most considerable in England, as Leeds, Birmingham, and Macclesfield.[476]

It has been suggested, indeed, by Brady,[477] that these returns may not appear so false and collusive if we suppose the sheriff to mean only that there were no resident burgesses within these boroughs fit to be returned, or that the expense of their wages would be too heavy for the place to support. And no doubt the latter plea, whether implied or not in the return, was very frequently an inducement to the sheriffs to spare the smaller boroughs. The wages of knights were four shillings a day, levied on all freeholders, or at least on all holding by knight-service, within the county.[478] Those of burgesses were half that sum;[479] but

[475] Brady on "Boroughs," p. 110; 3 Prynne, p. 231. The latter even argues that this power of omitting ancient boroughs was legally vested in the sheriff before the fifth of Richard II; and though the language of that act implies the contrary of this position, yet it is more than probable that most of our parliamentary boroughs by prescription, especially such as were then unincorporated, are indebted for their privileges to the exercise of the sheriff's discretion; not founded on partiality, which would rather have led him to omit them, but on the broad principle that they were sufficiently opulent and important to send representatives to Parliament.

[476] Willis, "Notitia Parliamentaria," vol. i, preface, p. 35.

[477] P. 117.

[478] It is a perplexing question whether freeholders in socage were liable to contribute toward the wages of knights; and authorities might be produced on both sides. The more probable supposition is, that they were not exempted. (See the various petitions relating to the payment of wages in Prynne's fourth "Register.") This is not unconnected with the question as to their right of suffrage. (See p. 664 of this volume.) Freeholders within franchises made repeated endeavours to exempt themselves from payment of wages. Thus in 9 H. IV it was settled by Parliament that, to put an end to the disputes on this subject between the people of Cambridgeshire and those of the Isle of Ely, the latter should pay 200*l.* and be quit in future of all charges on that account. ("Rot. Parl.," vol. iv, p. 383.) By this means the inhabitants of that franchise seem to have purchased the right of suffrage, which they still enjoy, though not, I suppose, suitors to the county court. In most other franchises, and in many cities erected into distinct counties, the same privilege of voting for knights of the shire is practically exercised; but whether this has not proceeded as much from the tendency of returning officers and of Parliament to favour the right of election in doubtful cases, as from the merits of their pretensions, may be a question.

[479] The wages of knights and burgesses were first reduced to this certain sum by the writs De levandis expensis, 16 E. II. (Prynne's fourth "Register," p. 53.) These were issued at the request of those who had served, after the dissolution of Parliament, and included a certain number of days, according to the distance of the county whence they came, for going and returning. It appears by these that thirty-five or forty miles were reckoned a day's journey; which may correct the exaggerated notions of bad roads and tardy locomotion that are sometimes entertained. (See Prynne's fourth "Register," and Willis's "Notitia Parliamentaria," passim.)

The latest entries of writs for expenses in the close rolls are of 2 H. V.; but they may be proved to have issued much longer; and Prynne traces them to the end of Henry VIII's reign, p 495. Without the formality of this writ a very few instances of towns remunerating their burgesses for attendance in Parliament are known to have occurred in

even this pittance was raised with reluctance and difficulty from miserable burghers, little solicitous about political franchises. Poverty, indeed, seems to have been accepted as a legal excuse. In 6 Edward II the sheriff of Northumberland returns to the writ of summons that all his knights are not sufficient to protect the county; and in the 1 Edward III that they were too much ravaged by their enemies to send any members to Parliament.[480] The sheriffs of Lancashire, after several returns that they had no boroughs within their county, though Wigan, Liverpool, and Preston were such, alleged at length that none ought to be called upon on account of their poverty. This return was constantly made, from 36 Edward III to the reign of Henry VI.[481]

The elective franchise was deemed by the boroughs no privilege or blessing, but rather, during the chief part of this period, an intolerable grievance. Where they could not persuade the sheriff to omit sending his writ to them, they set it at defiance by sending no return. And this seldom failed to succeed, so that, after one or two refusals to comply, which brought no punishment upon them, they were left in quiet enjoyment of their insignificance. The town of Torrington, in Devonshire, went further, and obtained a charter of exemption from sending burgesses, grounded upon what the charter asserts to appear on the rolls of chancery, that it had never been represented before the 21 Edward III. This is absolutely false, and is a proof how little we can rely upon the veracity of records, Torrington having made not less than twenty-two returns before that time. It is curious that in spite of this charter the town sent members to the two ensuing Parliaments, and then ceased forever.[482] Richard II gave the inhabitants of Colchester a dispensation from returning burgesses for five years, in consideration of the expenses they had incurred in fortifying the town.[483] But this immunity, from whatever reason, was not regarded, Colchester having continued to make returns as before.

The partiality of sheriffs in leaving out boroughs, which were accustomed in old time to come to the Parliament, was repressed, as far as law could repress it, by a statute of Richard II, which imposed a fine on them for such neglect, and upon any member of Parliament who should absent himself from his duty.[484] But it is, I think, highly probable that a great part of those who were elected from the boroughs did not trouble themselves with attendance in Parliament. The sheriff even found it necessary to

later times. Andrew Marvel is commonly said to have been the last who received this honourable salary. A modern book asserts that wages were paid in some Cornish boroughs as late as the eighteenth century. Lysons's "Cornwall," preface, p. xxxii; but the passage quoted in proof of this is not precise enough to support so unlikely a fact.

[480] 3 Prynne, p. 165.
[481] 4 Prynne, p. 317.
[482] 4 Prynne, p. 320.
[483] 3 Prynne, p. 241.
[484] 5 R. II, stat. ii, c. 4.

take sureties for their execution of so burdensome a duty, whose names it was usual, down to the end of the fifteenth century, to indorse upon the writ, along with those of the elected.[485] This expedient is not likely to have been very successful; and the small number, comparatively speaking, of writs for expenses of members for boroughs, which have been published by Prynne, while those for the knights of shires are almost complete, leads to a strong presumption that their attendance was very defective. This statute of Richard II produced no sensible effect.

By what persons the election of burgesses was usually made is a question of great obscurity, which is still occasionally debated before committees of Parliament. It appears to have been the common practice for a very few of the principal members of the corporation to make the election in the county court, and their names, as actual electors, are generally returned upon the writ by the sheriff.[486] But we can not surely be warranted by this to infer that they acted in any other capacity than as deputies of the whole body, and indeed it is frequently expressed that they chose such and such persons by the assent of the community;[487] by which word, in an ancient corporate borough, it seems natural to understand the freemen participating in its general franchises, rather than the ruling body, which, in many instances, at present, and always perhaps in the earliest age of corporations, derived its authority by delegation from the rest. The consent, however, of the inferior freemen we may easily believe to have been merely nominal; and, from being nominal, it would in many places come by degrees not to be required at all; the corporation, specially so denominated, or municipal government, acquiring by length of usage an exclusive privilege in election of members of Parliament, as they did in local administration. This, at least, appears to me a more probable hypothesis than that of Dr. Brady, who limits the original right of election in all corporate boroughs to the aldermen or other capital burgesses.[488]

[485] Luders's "Reports," vol. i, p. 15. Sometimes an elected burgess absolutely refused to go to Parliament, and drove his constituents to a fresh choice. (3 Prynne, p. 277.)

[486] 3 Prynne, p. 252.

[487] 3 Prynne, p. 257, de assensu totius communitatis prædictæ elegerunt R. W.; so in several other instances quoted in the ensuing pages.

[488] Brady on "Boroughs," p. 132, etc. Mr. Allen, than whom no one of equal learning was ever less inclined to depreciate popular rights, inclines more than we should expect to the school of Brady in this point. "There is reason to believe that originally the right of election in boroughs was vested in the governing part of these communities, or in a select portion of the burgesses; and that, in the progress of the House of Commons to power and importance, the tendency has been in general to render the elections more popular. It is certain that for many years burgesses were elected in the county courts, and apparently by delegates from the boroughs, who were authorized by their fellow-burgesses to elect representatives for them in Parliament. In the reigns of James I and Charles I, when popular principles were in their greatest vigour, there was a strong disposition in the House of Commons to extend the right of suffrage in boroughs, and in many instances these efforts were crowned with success." ("Edin. Rev.," xxviii, 145.) But an election by delegates chosen for that purpose by the burgesses at large is very different from one by the governing part of the community. Even in the latter case, however, this part had generally

The members of the House of Commons, from this occasional disuse of ancient boroughs as well as from the creation of new ones, underwent some fluctuation during the period subject to our review. Two hundred citizens and burgesses sat in the Parliament held by Edward I in his twenty-third year, the earliest epoch of acknowledged representation. But in the reigns of Edward III and his three successors about ninety places, on an average, returned members, so that we may reckon this part of the commons at one hundred and eighty.[489] These, if regular in their duties, might appear an overbalance for the seventy-four knights who sat with them. But the dignity of ancient lineage, territorial wealth, and military character, in times when the feudal spirit was hardly extinct and that of chivalry at its height, made these burghers veil their heads to the landed aristocracy. It is pretty manifest that the knights, though doubtless with some support from the representatives of towns, sustained the chief brunt of battle against the crown. The rule and intention of our old constitution was, that each county, city, or borough should elect deputies out of its own body, resident among themselves, and consequently acquainted with their necessities and grievances.[490] It would be very interesting to discover at what time, and by what degrees, the practice of election swerved from this strictness. But I have not been able to trace many steps of the transition. The number of practising lawyers who sat in Parliament, of which there are several complaints, seem to afford an inference that it had begun in the reign of Edward III. Besides several petitions of the commons that none but knights or reputable squires should be returned for shires, an ordinance was made in the forty-sixth of his reign that no lawyer practising in the king's court, nor sheriff during his shrievalty, be returned knight for a county; because these lawyers put forward many petitions in the name of the commons which only concerned their clients.[491] This probably was truly alleged, as we may guess from the vast number of proposals for changing the course of legal process which fill the rolls during this reign. It is not to be doubted, however, that many practising lawyers were men of landed estate in their respective counties.

An act in the first year of Henry V directs that none be chosen

been chosen, at a greater or less interval of time, by the entire body. Sometimes, indeed, corporations fell into self-election and became close.

[489] Willis, "Notitia Parliamentaria," vol. iii, p. 96, etc.; 3 Prynne, p. 224, etc.

[490] In 4 Edw. II the sheriff of Rutland made this return: "Eligi feci in pleno comitatu, loco duorum militum, eo quod milites non sunt in hoc comitatu commorantes, duos homines de comitatu Rutland, de discretioribus et ad laborandum potentioribus," etc., 3 Prynne, p. 170. But this deficiency of actual knights soon became very common. In 19 E. II there were twenty-eight members returned from shires who were not knights, and but twenty-seven who were such. The former had at this time only two shillings or three shillings a day for their wages, while the real knights had four shillings. (4 Prynne, pp. 53, 74.) But in the next reign their wages were put on a level.

[491] "Rot. Parl.," vol. ii, p. 310.

knights, citizens, or burgesses who are not resident within the place for which they are returned on the day of the date of the writ.[492] This statute apparently indicates a point of time when the deviation from the line of law was frequent enough to attract notice, and yet not so established as to pass for an unavoidable irregularity. It proceeded, however, from great and general causes, which new laws, in this instance very fortunately, are utterly incompetent to withstand. There can not be a more apposite proof of the inefficacy of human institutions to struggle against the steady course of events than this unlucky statute of Henry V, which is almost a solitary instance in the law of England wherein the principle of desuetude has been avowedly set up against an unrepealed enactment. I am not aware, at least, of any other, which not only the House of Commons, but the Court of King's Bench, has deemed itself at liberty to declare unfit to be observed.[493] Even at the time when it was enacted, the law had probably, as such, very little effect. But still the plurality of elections were made according to ancient usage, as well as statute, out of the constituent body. The contrary instances were exceptions to the rule; but exceptions increasing continually, till they subverted the rule itself. Prynne has remarked that we chiefly find Cornish surnames among the representatives of Cornwall, and those of northern families among the returns from the north. Nor do the members for shires and towns seem to have been much interchanged; the names of the former belonging to the most ancient families, while those of the latter have a more plebeian cast.[494] In the reign of Edward IV, and not before, a very few of the burgesses bear the addition of esquire in the returns, which became universal in the middle of the succeeding century.[495]

Even county elections seem in general, at least in the fourteenth century, to have been ill attended and left to the influence of a few powerful and active persons. A petitioner against an undue return in the twelfth of Edward II complains that, whereas he had been chosen knight for Devon by Sir William Martin, Bishop of Exeter, with the consent of the county, yet the sheriff

[492] "Rot. Parl.," 1 H. V, c. 1.

[493] See the case of Dublin University in the first volume of Peckwell's "Reports" of contested elections. (Note D, p. 53.) The statute itself was repealed by 14 G. III, c. 58.

[494] By 23 H. VI, c. 15, none but gentlemen born, generosi a nativitate, are capable of sitting in Parliament as knights of counties; an election was set aside, 39 H. VI, because the person returned was not of gentle birth. Prynne's third "Register," p. 161.

[495] Willis, "Notitia Parliamentaria." Prynne's fourth "Register," p. 1184. A letter in that authentic and interesting accession to our knowledge of ancient times, the Paston collection, shows that eager canvass was sometimes made by country gentlemen in Edward IV's reign to represent boroughs. This letter throws light at the same time on the creation or revival of boroughs. The writer tells Sir John Paston, "If ye miss to be burgess of Malden, and my lord chamberlain will, ye may be in another place; there be a dozen towns in England that choose no burgess, which ought to do it; ye may be set in for one of those towns an' ye be friended." This was in 1472, vol. ii, p. 107.

had returned another.[496] In several indentures of a much later date a few persons only seem to have been concerned in the election, though the assent of the community be expressed.[497] These irregularities, which it would be exceedingly erroneous to convert, with Hume, into lawful customs, resulted from the abuses of the sheriff's power, which, when Parliament sat only for a few weeks with its hands full of business, were almost sure to escape with impunity. They were sometimes also countenanced, or rather instigated, by the crown, which, having recovered in Edward II's reign the prerogative of naming the sheriffs, surrendered by an act of his father,[498] filled that office with its creatures, and constantly disregarded the statute forbidding their continuance beyond a year. Without searching for every passage that might illustrate the interference of the crown in elections, I will mention two or three leading instances. When Richard II was meditating to overturn the famous commission of reform, he sent for some of the sheriffs, and required them to permit no knight or burgess to be elected to the next Parliament without the approbation of the king and his council. The sheriffs replied that the commons would maintain their ancient privilege of electing their own representatives.[499] The Parliament of 1397, which attainted his enemies and left the constitution at his mercy, was chosen, as we are told, by dint of intimidation and influence.[500] Thus also that of Henry VI, held at Coventry in 1460, wherein the Duke of York and his party were attainted, is said to have been unduly returned by the like means. This is rendered probable by a petition presented to it by the sheriffs, praying indemnity for all which they had done in relation thereto contrary to law.[501] An act passed according to their prayer, and in confirmation of elections. A few years before, in 1455, a singular letter under the king's signet is addressed to the sheriffs, reciting that "we be enfourmed there is busy labour made in sondry wises by certaine persons for the chesyng of the said knights, . . . of which labour we marvaille greatly, insomuche as it is nothing to the honour of the laborers, but ayenst their worship; it is also ayenst the lawes of the lande," with more to that effect, and enjoining the sheriff to let elections be free and the peace kept.[502] There was certainly no reason to wonder that a Parliament, which was to shift the virtual sovereignty of the kingdom

[496] Glanvil's "Reports of Elections," edit. 1774, Introduction, p. xii.

[497] Prynne's third "Register," p. 171.

[498] 28 E. I, c. 8; 9 E. II. It is said that the sheriff was elected by the people of his county in the Anglo-Saxon period; no instance of this, however, according to Lord Littleton, occurs after the Conquest. Shrievalties were commonly sold by the Norman kings. ("Hist. of Henry II," vol. ii, p. 921.)

[499] "Vita Ricardi II," p. 85.

[500] Otterbourne, p. 191. He says of the knights returned on this occasion, that they were not elected per communitatem, ut mos exigit, sed per regiam voluntatem.

[501] Prynne's second "Register," p. 141; "Rot. Parl.," vol. v, p. 367.

[502] Prynne's second "Register," page 450.

into the hands of one whose claims were known to extend much further, should be the object of tolerably warm contests. Thus in the Paston letters we find several proofs of the importance attached to parliamentary elections by the highest nobility.[503]

The House of Lords, as we left it in the reign of Henry III, was entirely composed of such persons holding lands by barony as were summoned by particular writ of Parliament.[504] Tenure and summons were both essential at this time in order to render any one a lord of Parliament—the first by the ancient constitution of our feudal monarchy from the conquest, the second by some regulation or usage of doubtful origin, which was thoroughly established before the conclusion of Henry III's reign. This produced, of course, a very marked difference between the greater and the lesser or unparliamentary barons. The tenure of the latter, however, still subsisted, and, though too inconsiderable to be members of the legislature, they paid relief as barons, they might be challenged on juries, and, as I presume, by parity of reasoning, were entitled to trial by their peerage. These lower barons, or, more commonly, tenants by parcels of baronies,[505] may be dimly traced to the latter years of Edward III.[506] But many of them were successively summoned to Parliament, and thus recovered the former lustre of their rank, while the rest fell gradually into the station of commoners, as tenants by simple knight-service.

As tenure without summons did not entitle any one to the privileges of a lord of Parliament, so no spiritual person at least ought to have been summoned without baronial tenure. The Prior of St. James at Northampton, having been summoned in the twelfth of Edward II, was discharged upon his petition, because he held nothing of the king by barony, but only in frankalmoign.

[503] Vol. i, pp. 96, 98; vol. ii, pp. 99, 105; vol. ii, p. 243.

[504] Upon this dry and obscure subject of inquiry, the nature and constitution of the House of Lords during this period, I have been much indebted to the first part of Prynne's "Register," and to West's "Inquiry into the Manner of Creating Peers"; which, though written with a party motive, to serve the ministry of 1719, in the peerage bill, deserves, for the perspicuity of the method and style, to be reckoned among the best of our constitutional dissertations.

[505] Baronies were often divided by descent among females into many parts, each retaining its character as a fractional member of a barony. The tenants in such case were said to hold of the king by the third, fourth, or twentieth part of a barony, and did service or paid relief in such proportion.

[506] Madox, "Baronia Anglica," pp. 42 and 58; West's "Inquiry," pp. 28, 33. That a baron could only be tried by his fellow-barons was probably a rule as old as the trial per pais of a commoner. In 4 E. III, Sir Simon Bereford having been accused before the lords in Parliament of aiding and advising Mortimer in his treasons, they declared with one voice that he was not their peer; wherefore they were not bound to judge him as a peer of the land; but inasmuch as it was notorious that he had been concerned in usurpation of royal powers and murder of the liege lord (as they styled Edward II), the lords, as judges of Parliament, by assent of the king in Parliament, awarded and adjudged him to be hanged. A like sentence with a like protestation was passed on Mautravers and Gournay. There is a very remarkable anomaly in the case of Lord Berkley, who, though undoubtedly a baron, his ancestors having been summoned from the earliest date of writs, put himself on his trial in Parliament, by twelve knights of the county of Gloucester. ("Rot. Parl." vol. ii, p. 53; Rymer, tome iv, p. 734.)

The Prior of Bridlington, after frequent summonses, was finally left out, with an entry made in the roll that he held nothing of the king. The Abbot of Leicester had been called to fifty Parliaments; yet, in 25 Edward III, he obtained a charter of perpetual exemption, reciting that he held no lands or tenements of the crown by barony or any such service as bound him to attend Parliaments or councils.[507] But great irregularities prevailed in the rolls of chancery, from which the writs to spiritual and temporal peers were taken, arising in part, perhaps, from negligence, in part from wilful perversion; so that many abbots and priors, who like these had no baronial tenure, were summoned at times and subsequently omitted, of whose actual exemption we have no record. Out of one hundred and twenty-two abbots and forty-one priors who at some time or other sat in Parliament, but twenty-five of the former and two of the latter were constantly summoned: the names of forty occur only once, and those of thirty-six others not more than five times.[508] Their want of baronial tenure, in all probability, prevented the repetition of writs which accident or occasion had caused to issue.[509]

The ancient temporal peers are supposed to have been intermingled with persons who held nothing of the crown by barony, but attended in Parliament solely by virtue of the king's prerogative exercised in the writ of summons.[510] These have been called barons by writ; and it seems to be denied by no one that, at least under the first three Edwards, there were some of this description in Parliament. But after all the labours of Dugdale and others in tracing the genealogies of our ancient aristocracy, it is a problem of much difficulty to distinguish these from the territorial barons. As the latter honours descended to female heirs, they passed into new families and new names, so that we can hardly decide of one summoned for the first time to Parliament that he did not inherit the possession of a feudal barony. Husbands of baronial heiresses were frequently summoned in their wives' right, but by their own names. They even sat after

[507] Prynne, p. 142, etc.; West's "Inquiry."

[508] Prynne, p. 141.

[509] It is worthy of observation that the spiritual peers summoned to Parliament were in general considerably more numerous than the temporal. (Prynne, p. 114.) This appears, among other causes, to have saved the Church from that sweeping reformation of its wealth, and perhaps of its doctrines, which the commons were thoroughly inclined to make under Richard II and Henry IV. Thus the reduction of the spiritual lords by the dissolution of monasteries was indispensably required to bring the ecclesiastical order into due subjection to the state.

[510] Perhaps it can hardly be said that the king's prerogative compelled the party summoned, not being a tenant by barony, to take his seat. But though several spiritual persons appear to have been discharged from attendance on account of their holding nothing by barony, as has been justly observed, yet there is, I believe, no instance of any layman's making such an application. The terms of the ancient writ of summons, however, in fide et homagio quibus nobis tenemini, afford a presumption that a feudal tenure was, in construction of law, the basis of every lord's attendance in Parliament. This form was not finally changed to the present, in fide et ligeantiâ, till the forty-sixth of Edw. III. (Prynne's first "Register," p. 206.)

the death of their wives, as tenants by the courtesy.[511] Again, as lands, though not the subject of frequent transfer, were, especially before the statute de donis, not inalienable, we can not positively assume that all the right heirs of original barons had preserved those estates upon which their barony had depended.[512] If we judge, however, by the lists of those summoned, according to the best means in our power, it will appear, according at least to one of our most learned investigators of this subject, that the regular barons by tenure were all along very far more numerous than those called by writ; and that from the end of Edward III's reign no spiritual persons, and few, if any, laymen, except peers created by patent, were summoned to Parliament who did not hold territorial baronies.[513]

With respect to those who were indebted for their seats among the lords to the king's writ, there are two material questions: whether they acquired an hereditary nobility by virtue of the writ; and, if this be determined against them, whether they had a decisive or merely a deliberative voice in the House. Now, for the first question, it seems that, if the writ of summons conferred an estate of inheritance, it must have done so either by virtue of its terms or by established construction and precedent. But the writ contains no words by which such an estate can in law be limited; it summons the persons addressed to attend in Parliament in order to give his advice on the public business, but by no means implies that this advice will be required of his heirs, or even of himself on any other occasion. The strongest expression is "vobiscum et cæteris prælatis, magnatibus et proceribus," which appears to place the party on a sort of level with the peers. But the words magnates and proceres are used very largely in ancient language, and, down to the time of Edward III, comprehend the king's ordinary council, as well as his barons. Nor can these, at any rate, be construed to pass an inheritance, which in the grant of a private person, much more of a king, would require express words of limitation. In a single instance, the writ of summons to Sir Henry de Bromflete (27 Henry VI), we find these remarkable words: Volumus enim vos et hæredes vestros masculos de corpore vestro legitimè exeuntes barones de Vescy existere. But this Sir Henry de Bromflete was the lineal heir of the ancient barony De Vesci.[514] And if it were true that

[511] Collins's "Proceedings on Claims of Baronies," pp. 24 and 73.

[512] Prynne speaks of "the alienation of baronies by sale, gift, or marriage, after which the new purchasers were summoned instead," as if it frequently happened. (First "Register," p. 239.) And several instances are mentioned in the Abergavenny case ("Collins's "Proceedings," p. 113) where, land baronies having been entailed by the owners on their heirs male, the heirs general have been excluded from inheriting the dignity.

[513] Prynne's first "Register," p. 237. This must be understood to mean that no new families were summoned; for the descendants of some who are not supposed to have held land baronies may constantly be found in later lists. [Note IX.]

[514] West's "Inquiry." Prynne, who takes rather lower ground than West,

the writ of summons conveyed a barony of itself, there seems no occasion to have introduced these extraordinary words of creation or revival. Indeed, there is less necessity to urge these arguments from the nature of the writ, because the modern doctrine, which is entirely opposite to what has here been suggested, asserts that no one is ennobled by the mere summons unless he has rendered it operative by taking his seat in Parliament, distinguishing it in this from a patent of peerage, which requires no act of the party for its completion.[515] But this distinction could be supported by nothing except long usage. If, however, we recur to the practice of former times, we shall find that no less than ninety-eight laymen were summoned once only to Parliament, none of their names occurring afterward, and fifty others two, three, or four times. Some were constantly summoned during their lives, none of whose posterity ever attained that honour.[516] The course of proceeding, therefore, previous to the accession of Henry VII, by no means warrants the doctrine which was held in the latter end of Elizabeth's reign,[517] and has since been too fully established by repeated precedents to be shaken by any reasoning. The foregoing observations relate to the more ancient history of our constitution, and to the plain matter of fact as to those times, without considering what political cause there might be to prevent the crown from introducing occasional counsellors into the House of Lords.[518]

It is manifest by many passages in these records that bannerets were frequently summoned to the upper House of Parliament, constituting a distinct class inferior to barons, though generally named together, and ultimately confounded, with them.[519] Barons are distinguished by the appellation of Sire, bannerets have only that of Monsieur, as le Sire de Berkeley, le Sire de

and was not aware of Sir Henry de Bromflete's descent, admits that a writ of summons to any one, naming him baron, or dominus, as Baroni de Greystoke, domino de Furnival, did give an inheritable peerage; not so a writ generally worded, naming the party knight or esquire, unless he held by barony.

[515] Lord Abergavenny's case, 12 Coke's "Reports"; and Collins's "Proceedings on Claims of Baronies by Writ," p. 61.

[516] Prynne's first "Register," p. 232. Elsynge, who strenuously contends against the writ of summons conferring an hereditary nobility, is of opinion that the party summoned was never omitted in subsequent Parliaments, and consequently was a peer for life (p. 43). But more regard is due to Prynne's later inquiries.

[517] Case of Willoughby, Collins, p. 8; of Dacres, p. 41; of Abergavenny, p. 119. But see the case of Grey de Ruthin, pp. 222 and 230, where the contrary position is stated by Selden upon better grounds.

[518] It seems to have been admitted by Lord Redesdale, in the case of the barony of L'Isle, that a writ of summons, with sufficient proof of having sat by virtue of it in the House of Lords, did in fact create an hereditary peerage from the fifth year of Richard II, though he resisted this with respect to claimants who could only deduce their pedigree from an ancestor summoned by one of the three Edwards. (Nicolas's "Case of Barony of L'Isle," p. 200.) The theory, therefore, of West, which denies peerage by writ even to those summoned in several later reigns, must be taken with limitation. "I am informed," it is said by Mr. Hart, arguendo, "that every person whose name appears in the writ of summons of 5 Ric. II was again summoned to the following Parliament, and their posterity have sat in Parliament as peers" (p. 233).

[519] "Rot. Parl.," vol. ii., pp. 147, 309; vol. iii, pp. 100, 386, 424; vol. iv, p. 374. Rymer, tome vii, p. 161.

Fitzwalter, Monsieur Richard Scrop, Monsieur Richard Stafford. In the seventh of Richard II, Thomas Camoys having been elected knight of the shire for Surrey, the king addresses a writ to the sheriff, directing him to proceed to a new election, cum hujusmodi banneretti ante hæc tempora in milites comitatus ratione alicujus parliamenti eligi minime consueverunt. Camoys was summoned by writ to the same Parliament. It has been inferred from hence by Selden that he was a baron, and that the word banneret is merely synonymous.[520] But this is contradicted by too many passages. Bannerets had so far been considered as commoners some years before that they could not be challenged on juries.[521] But they seem to have been more highly estimated at the date of this writ.

The distinction, however, between barons and bannerets died away by degrees. In the second of Henry VI [522] Scrop of Bolton is called le Sire de Scrop; a proof that he was then reckoned among the barons. The bannerets do not often appear afterward by that appellation as members of the upper House. Bannerets, or, as they are called, banrents, are enumerated among the orders of Scottish nobility in the year 1428, when the statute directing the common lairds or tenants in capite to send representatives was enacted; and a modern historian justly calls them an intermediate order between the peers and lairds.[523] Perhaps a consideration of these facts, which have frequently been overlooked, may tend in some measure to explain the occasional discontinuance, or sometimes the entire cessation, of writs of summons to an individual or his descendants; since we may conceive that bannerets, being of a dignity much inferior to that of barons, had no such inheritable nobility in their blood as rendered their parliamentary privileges a matter of right. But whether all those who without any baronial tenure received their writs of summons to Parliament belonged to the order of bannerets I can not pretend to affirm, though some passages in the rolls might rather lead to such a supposition.[524]

[520] Selden's Works, vol. iii, p. 764. Selden's opinion that bannerets in the lords' house were the same as barons may seem to call on me for some contrary authorities, in order to support my own assertion, besides the passages above quoted from the rolls, of which he would naturally be supposed a more competent judge. I refer therefore to Spelman's "Glossary," p. 74; Whitelocke on "Parliamentary Writ," vol. i, p. 314; and Elsynge's "Method of holding Parliaments," p. 65.

[521] Puis un fut chalengé purce qu'il fut a banniere, et non allocatur; car s'il soit a banniere, et ne tient pas par baronie, il sera en l'assise. Year-book 22 Edw. III, fol. 18 a. apud West's "Inquiry," p. 22.

[522] "Rot. Parl.," vol. iv, p. 201.

[523] Pinkerton's "Hist. of Scotland," vol. i, pp. 357 and 365.

[524] The lords' committee do not like, apparently, to admit that bannerets were summoned to the House of Lords as a distinct class of peers. "It is observable," they say, "that this statute (5 Ric. II, c. 4) speaks of bannerets as well as of dukes, earls, and barons, as persons bound to attend the Parliament; but it does not follow that banneret was then considered as a name of dignity distinct from that honourable knighthood under the king's banner in the field of battle, to which precedence of all other knights was attributed" (p. 342). But did the committee really believe that all the bannerets of whom we read in the reigns of Richard II and afterward had

The second question relates to the right of suffrage possessed by these temporary members of the upper House. It might seem plausible certainly to conceive that the real and ancient aristocracy would not permit their powers to be impaired by numbering the votes of such as the king might please to send among them, however they might allow them to assist in their debates. But I am much more inclined to suppose that they were in all respects on an equality with other peers during their actual attendance in Parliament. For—1. They are summoned by the same writ as the rest, and their names are confused among them in the lists; whereas the judges and ordinary counsellors are called by a separate writ, vobiscum et cæteris de consilio nostro, and their names are entered after those of the peers.[525] 2. Some, who do not appear to have held land baronies, were constantly summoned from father to son, and thus became hereditary lords of Parliament through a sort of prescriptive right, which probably was the foundation of extending the same privilege afterward to the descendants of all who had once been summoned. There is no evidence that the family of Scrope, for example, which was eminent under Edward III and subsequent kings, and gave rise to two branches, the Lords of Bolton and Masham, inherited any territorial honour.[526] 3. It is very difficult to obtain any direct proof as to the right of voting, because the rolls of Parliament do not take notice of any debates; but there happens to exist one remarkable passage in which the suffrages of the lords are individually specified. In the first Parliament of Henry IV they were requested by the Earl of Northumberland to declare what should be done with the late King Richard. The lords then present agreed that he should be detained in safe cus-

been knighted at Crécy and Poitiers? The name is only found in parliamentary proceedings during comparatively pacific times.

[525] West, whose business it was to represent the barons by writ as mere assistants without suffrage, cites the writ to them rather disingenuously, as if it ran vobiscum et cum prelatis, magnatibus ac proceribus, omitting the important word cæteris (p. 35). Prynne, however, from whom West has borrowed a great part of his arguments, does not seem to go the length of denying the right of suffrage to persons so summoned. (First "Register," p. 237.)

[526] These descended from two persons, each named Geoffrey le Scrope, chief justices of K. B. and C. B. at the beginning of Edward III's reign. The name of one of them is once found among the barons, but I presume this to have been an accident, or mistake in the roll; as he is frequently mentioned afterward among the judges. Scrope, chief justice of K. B., was made a banneret in 14 E. III. He was the father of Henry Scrope of Masham, a considerable person in Edward III and Richard II's government, whose grandson, Lord Scrope of Masham, was beheaded for a conspiracy against Henry V. There was a family of Scrupe as old as the reign of Henry II; but it is not clear, notwithstanding Dugdale's assertion, that the Scropes descended from them, or at least that they held the same lands: nor were the Scrupes barons, as appears by their paying a relief of only sixty marks for three knights' fees. (Dugdale's "Baronage," p. 546.)

The want of consistency in old records throws much additional difficulty over this intricate subject. Thus Scrope of Masham, though certainly a baron, and tried next year by the peers, is called chevalier in an instrument of 1 H. V. (Rymer, tome ix, p. 13.) So in the indictment against Sir John Oldcastle, he is constantly styled knight, though he had been summoned several times as Lord Cobham, in right of his wife, who inherited that barony. ("Rot. Parl.," vol. iv, p. 107.)

tody; and on account of the importance of this matter it seems to have been thought necessary to enter their names upon the roll in these words: The names of the lords concurring in their answer to the said question here follow; to wit, the Archbishop of Canterbury and fourteen other bishops; seven abbots; the Prince of Wales, the Duke of York, and six earls; nineteen barons, styled thus—le Sire de Roos, or le Sire de Grey de Ruthyn. Thus far the entry has nothing singular; but then follow these nine names: Monsieur Henry Percy, Monsieur Richard Scrop, le Sire Fitz-hugh, le Sire de Bergeveny, le Sire de Lomley, le Baron de Greystock, le Baron de Hilton, Monsieur Thomas Erpyngham, chamberlayn, Monsieur Mayhewe Gournay. Of these nine, five were undoubtedly barons, from whatever cause misplaced in order. Scrop was summoned by writ; but his title of Monsieur, by which he is invariably denominated, would of itself create a strong suspicion that he was no baron, and in another place we find him reckoned among the bannerets. The other three do not appear to have been summoned, their writs probably being lost. One of them, Sir Thomas Erpyngham, a statesman well known in the history of those times, is said to have been a banneret;[527] certainly he was not a baron. It is not unlikely that the two others, Henry Percy (Hotspur) and Gournay, an officer of the household, were also bannerets; they can not at least be supposed to be barons, neither were they ever summoned to any subsequent Parliament. Yet in the only record we possess of votes actually given in the House of Lords they appear to have been reckoned among the rest.[528]

The next method of conferring an honour of peerage was by creation in Parliament. This was adopted by Edward III in several instances, though always, I believe, for the higher titles of duke or earl. It is laid down by lawyers that whatever the king is said in an ancient record to have done in full Parliament must be taken to have proceeded from the whole legislature. As a question of fact, indeed, it might be doubted whether, in many proceedings where this expression is used, and especially in the creation of peers, the assent of the commons was specifically and deliberately given. It seems hardly consonant to the circumstances of their order under Edward III to suppose their sanction necessary in what seemed so little to concern their interest. Yet there is an instance in the fortieth year of that prince where the lords individually, and the commons with one voice, are declared to have consented, at the king's request, that the Lord de Coucy, who had married his daughter, and was already possessed of estates in England, might be raised to the dignity of

[527] Blomefield's "Hist. of Norfolk," vol. iii, p. 645 (folio edit.).

[528] "Rot. Parl.," volume iii, page 427.

an earl, whenever the king should determine what earldom he would confer upon him.[529] Under Richard II the marquisate of Dublin is granted to Vere by full consent of all the estates. But this instrument, besides the unusual name of dignity, contained an extensive jurisdiction and authority over Ireland.[530] In the same reign Lancaster was made Duke of Guienne, and the Duke of York's son created Earl of Rutland, to hold during his father's life. The consent of the lords and commons is expressed in their patents, and they are entered upon the roll of Parliament.[531] Henry V created his brothers Dukes of Bedford and Gloucester by request of the lords and commons.[532] But the patent of Sir John Cornwall, in the tenth of Henry VI, declares him to be made Lord Fanhope, "by consent of the lords, in the presence of the three estates of Parliament," as if it were designed to show that the commons had not a legislative voice in the creation of peers.[533]

The mention I have made of creating peers by act of Parliament has partly anticipated the modern form of letters-patent, with which the other was nearly allied. The first instance of a barony conferred by patent was in the tenth year of Richard II, when Sir John Holt, a judge of the Common Pleas, was created Lord Beauchamp of Kidderminster. Holt's patent, however, passed while Richard was endeavouring to act in an arbitrary manner; and, in fact, he never sat in Parliament, having been attainted in that of the next year by the name of Sir John Holt. In a number of subsequent patents down to the reign of Henry VII the assent of Parliament is expressed, though it frequently happens that no mention of it occurs in the parliamentary roll. And in some instances the roll speaks to the consent of Parliament where the patent itself is silent.[534]

It is now perhaps scarcely known by many persons not unversed in the constitution of their country that, besides the bishops and baronial abbots, the inferior clergy were regularly summoned at every Parliament. In the writ of summons to a bishop he is still directed to cause the dean of his cathedral church, the archdeacon of his diocese, with one proctor from the chapter of the former, and two from the body of his clergy, to attend with him at the place of meeting. This might, by an inobservant reader, be confounded with the summons to the convocation, which is composed of the same constituent parts, and, by mod-

[529] "Rot. Parl., vol. ii, p. 290.
[530] Vol. iii, p. 209.
[531] Id., pp. 263, 264.
[532] Vol. iv, p. 17.
[533] Id., p. 401.
[534] West's "Inquiry," p. 65. This writer does not allow that the king possessed the prerogative of creating new peers, without consent of Parliament. But Prynne (1st "Register," p. 225), who generally adopts the same theory of peerage as West, strongly asserts the contrary; and the party views of the latter's treatise, which I mentioned above, should be kept in sight. It was his object to prove that the pending bill to limit the numbers of the peerage was conformable to the original constitution.

ern usage, is made to assemble on the same day. But it may easily be distinguished by this difference—that the convocation is provincial, and summoned by the metropolitans of Canterbury and York; whereas the clause commonly denominated præmunientes (from its first word) in the writ to each bishop proceeds from the crown, and enjoins the attendance of the clergy at the national council of Parliament.[535]

The first unequivocal instance of representatives appearing for the lower clergy is in the year 1255, when they are expressly named by the author of the "Annals of Burton."[536] They preceded, therefore, by a few years the House of Commons, but the introduction of each was founded upon the same principle. The king required the clergy's money, but dared not take it without their consent.[537] In the double Parliament, if so we may call it, summoned in 11 Edward I to meet at Northampton and York, and divided according to the two ecclesiastical provinces, the proctors of chapters for each province, but not those of the diocesan clergy, were summoned through a royal writ addressed to the archbishops. Upon account of the absence of any deputies from the lower clergy, these assemblies refused to grant a subsidy. The proctors of both descriptions appear to have been summoned by the præmunientes clause in the twenty-second, twenty-third, twenty-fourth, twenty-eighth, and thirty-fifth years of the same king; but in some other Parliaments of his reign the præmunientes clause is omitted.[538] The same irregularity continued under his successor; and the constant usage of inserting this clause in the bishop's writ is dated from 28 Edward III.[539]

It is highly probable that Edward I, whose legislative mind was engaged in modelling the constitution on a comprehensive scheme, designed to render the clergy an effective branch of Parliament, however their continual resistance may have defeated the accomplishment of this intention.[540] We find an entry upon the roll of his Parliament at Carlisle, containing a list of all the proctors deputed to it by the several dioceses of the kingdom. This may be reckoned a clear proof of their parliamentary attendance during his reign under the præmunientes clause; since the province of Canterbury could not have been present in convocation at a city beyond its limits.[541] And, indeed, if we were

[535] Hody's "History of Convocations," p. 12. "Dissertatio de antiquâ et moderna Synodi Anglicani Constitutione," prefixed to Wilkins's "Concilia," tome i.

[536] 2 Gale, "Scriptores Rer. Anglic.," tome ii, p. 355; Hody, p. 345. Atterbury ("Rights of Convocations," pp. 295, 315) endeavours to show that the clergy had been represented in Parliament from the Conquest as well as before it. Many of the passages he quotes are very inconclusive; but possibly there may be some weight in one from Matthew Paris, ad ann. 1247, and two or three writs of the reign of Henry III.

[537] Hody, p. 381; Atterbury's "Rights of Convocations," p. 221.

[538] Hody, p. 386; Atterbury, p. 222.

[539] Hody, p. 391.

[540] Gilbert's "Hist. of Exchequer," p. 47.

[541] "Rot. Parl.," vol. i, p. 189; Atterbury, p. 229.

to found our judgment merely on the language used in these writs, it would be hard to resist a very strange paradox, that the clergy were not only one of the three estates of the realm, but as essential a member of the legislature by their representatives as the commons.[542] They are summoned in the earliest year extant (23 Edward I) ad tractandum, ordinandum et faciendum nobiscum, et cum cæteris prælatis, proceribus, ac aliis incolis regni nostri; in that of the next year, ad ordinandum de quantitate et modo subsidii; in that of the twenty-eighth, ad faciendum et consentiendum his, quæ tunc de communi consilio ordinari contigerit. In later times it ran sometimes ad faciendum et consentiendum, sometimes only ad consentiendum; which, from 5 Richard II, has been the term invariably adopted.[543] Now, as it is usual to infer from the same words, when introduced into the writs for election of the commons, that they possessed an enacting power, implied in the words ad faciendum, or at least to deduce the necessity of their assent from the words ad consentiendum, it should seem to follow that the clergy were invested, as a branch of the Parliament, with rights no less extensive. It is to be considered how we can reconcile these apparent attributes of political power with the unquestionable facts that almost all laws, even while they continued to attend, were passed without their concurrence, and that, after some time, they ceased altogether to comply with the writ.[544]

The solution of this difficulty can only be found in that estrangement from the common law and the temporal courts which the clergy throughout Europe were disposed to effect. In this country their ambition defeated its own ends; and while they endeavoured by privileges and immunities to separate themselves from the people, they did not perceive that the line of demarcation thus strongly traced would cut them off from the sympathy of common interests. Everything which they could call of ecclesiastical cognizance was drawn into their own courts; while the administration of what they contemned as a barbarous system, the temporal law of the land, fell into the hands of lay judges. But these were men not less subtle, not less ambitious, not less

[542] The lower house of convocation, in 1547, terrified at the progress of reformation, petitioned that, "according to the tenor of the king's writ, and the ancient customs of the realm, they might have room and place and be associated with the commons in the nether house of this present Parliament, as members of the commonwealth and the king's most humble subjects." (Burnet's "Hist. of Reformation," vol. ii; Appendix, No. 17.) This assertion that the clergy had ever been associated as one body with the commons is not borne out by anything that appears on our records, and is contradicted by many passages. But it is said that the clergy were actually so united with the commons in the Irish Parliament till the Reformation. (Gilbert's "Hist. of the Exchequer," p. 57.)

[543] Hody, p. 392.

[544] The præmunientes clause in a bishop's writ of summons was so far regarded down to the Reformation, that proctors were elected, and their names returned upon the writ; though the clergy never attended from the beginning of the fifteenth century, and gave their money only in convocation. Since the Reformation the clause has been preserved for form merely in the writ. (Wilkins, "Dissertatio," ubi supra.)

attached to their profession than themselves; and wielding, as they did in the courts of Westminster, the delegated sceptre of judicial sovereignty, they soon began to control the spiritual jurisdiction, and to establish the inherent supremacy of the common law. From this time an inveterate animosity subsisted between the two courts, the vestiges of which have only been effaced by the liberal wisdom of modern ages. The general love of the common law, however, with the great weight of its professors in the king's council and in Parliament, kept the clergy in surprising subjection. None of our kings after Henry III were bigots; and the constant tone of the commons serves to show that the English nation was thoroughly averse to ecclesiastical influence, whether of their own Church or the See of Rome.

It was natural, therefore, to withstand the interference of the clergy summoned to Parliament in legislation, as much as that of the spiritual court in temporal jurisdiction. With the ordinary subjects, indeed, of legislation they had little concern. The oppressions of the king's purveyors, or escheators, or officers of the forests, the abuses or defects of the common law, the regulations necessary for trading towns and seaports, were matters that touched them not, and to which their consent was never required. And, as they well knew there was no design in summoning their attendance but to obtain money, it was with great reluctance that they obeyed the royal writ, which was generally obliged to be enforced by an archiepiscopal mandate.[545] Thus, instead of an assembly of deputies from an estate of the realm, they became a synod or convocation. And it seems probable that in most, if not all, instances where the clergy are said in the roll of Parliament to have presented their petitions, or are otherwise mentioned as a deliberative body, we should suppose the convocation alone of the province of Canterbury to be intended.[546] For that of York seems to have been always considered as inferior, and even ancillary, to the greater province, voting subsidies, and even assenting to canons, without deliberation, in compliance with the example of Canterbury;[547] the convocation of which province consequently assumed the importance of a national council. But in either point of view the proceedings of this ecclesiastical assembly, collateral in a certain sense to Par-

[545] Hody, pp. 396, 403, etc. In 1314 the clergy protest even against the recital of the king's writ to the archbishop directing him to summon the clergy of his province in his letters mandatory, declaring that the English clergy had not been accustomed, nor ought by right, to be convoked by the king's authority. (Atterbury, p. 230.)

[546] Hody, p. 425. Atterbury, pp. 42, 233. The latter seems to think that the clergy of both provinces never actually met in a national council or house of Parliament, under the præmunientes writ, after the reign of Edward II, though the proctors were duly returned. But Hody does not go quite so far, and Atterbury had a particular motive to enhance the influence of the convocation of Canterbury.

[547] Atterbury, p. 46.

liament, yet very intimately connected with it, whether sitting by virtue of the præmunientes clause or otherwise, deserve some notice in the constitutional history.

In the sixth year of Edward III the proctors of the clergy are specially mentioned as present at the speech pronounced by the king's commissioner, and retired, along with the prelates, to consult together upon the business submitted to their deliberation. They proposed, accordingly, a sentence of excommunication against disturbers of the peace, which was assented to by the lords and commons. The clergy are said afterward to have had leave, as well as the knights, citizens, and burgesses, to return to their homes, the prelates and peers continuing with the king.[548] This appearance of the clergy in full Parliament is not, perhaps, so decisively proved by any later record. But in the eighteenth of the same reign several petitions of the clergy are granted by the king and his council, entered on the roll of Parliament, and even the statute roll, and in some respects are still part of our law.[549] To these it seems highly probable that the commons gave no assent; and they may be reckoned among the other infringements of their legislative rights. It is remarkable that in the same Parliament the commons, as if apprehensive of what was in preparation, besought the king that no petition of the clergy might be granted till he and his council should have considered whether it would turn to the prejudice of the lords or commons.[550]

A series of petitions from the clergy, in the twenty-fifth of Edward III, had not probably any real assent of the commons, though it is once mentioned in the enacting words, when they were drawn into a statute.[551] Indeed, the petitions correspond so little with the general sentiment of hostility toward ecclesiastical privileges manifested by the lower House of Parliament, that they would not easily have obtained its acquiescence. The convocation of the province of Canterbury presented several petitions in the fiftieth year of the same king, to which they received an assenting answer, but they are not found in the statute-book. This, however, produced the following remonstrance from the commons at the next Parliament: "Also the commons beseech their lord the king that no statute nor ordinance be made at the petition of the clergy unless by assent of your commons, and that your commons be not bound by any constitutions which they make for their own profit without the commons' assent. For they will not be bound by any of your statutes or ordinances made

[548] "Rot. Parl.," vol. ii, pp. 64, 65.

[549] 18 E. III, stat. 3. "Rot. Parl.," vol. ii, p. 151. This is the Parliament in which it is very doubtful whether any deputies from cities and boroughs had a place. The pretended statutes were therefore every way null; being falsely imputed to an incomplete Parliament.

[550] "Rot. Parl.," vol. ii, p. 151.

[551] 25 E. III, stat. 3.

without their assent."[552] The king evaded a direct answer to this petition. But the province of Canterbury did not the less present their own grievances to the king in that Parliament, and two among the statutes of the year seem to be founded upon no other authority.[553]

In the first session of Richard II the prelates and clergy of both provinces are said to have presented their schedule of petitions which appear upon the roll, and three of which are the foundation of statutes unassented to in all probability by the commons.[554] If the clergy of both provinces were actually present, as is here asserted, it must, of course, have been as a House of Parliament, and not of convocation. It rather seems, so far as we can trust to the phraseology of records, that the clergy sat also in a national assembly under the king's writ in the second year of the same king.[555] Upon other occasions during the same reign, where the representatives of the clergy are alluded to as a deliberative body, sitting at the same time with the Parliament, it is impossible to ascertain its constitution; and, indeed, even from those already cited we can not draw any positive inference.[556] But whether in convocation or in Parliament, they certainly formed a legislative council in ecclesiastical matters by the advice and consent of which alone, without that of the commons (I can say nothing as to the lords), Edward III, and even Richard II, enacted laws to bind the laity. I have mentioned in a different place a still more conspicuous instance of this assumed prerogative—namely, the memorable statute against heresy in the

[552] 25 E. III, stat. 3, p. 368. The word they is ambiguous; Whitelocke (on "Parliamentary Writ," vol. ii, p. 346) interprets it of the commons: I should rather suppose it to mean the clergy.

[553] 50 E. III, c. 4 and 5.

[554] "Rot. Parl.," vol. iii, p. 25. A nostre tres excellent seigneur le roy suppliont humblement ses devotes oratours, les prelats et la clergie de la province de Canterbirs et d'Everwyk. (Stat. 1 Richard II, c. 13, 14, 15.) But see Hody, p. 425; Atterbury, p. 329.

[555] "Rot. Parl.," vol. iii, p. 37.

[556] It might be argued, from a passage in the Parliament roll of 21 R. II, that the clergy of both provinces were not only present, but that they were accounted an essential part of Parliament in temporal matters, which is contrary to the whole tenor of our laws. The commons are there said to have prayed that, "whereas many judgments and ordinances formerly made in Parliament had been annulled *because the estate of clergy had not been present thereat*, the prelates and clergy might make a proxy with sufficient power to consent in their name to all things done in this Parliament." Whereupon the spiritual lords agreed to intrust their powers to Sir Thomas Percy, and gave him a procuration commencing in the following words: "Nos Thomas Cantuar' et Robertus Ebor' archiepiscopi, ac prælati *et clerus utriusque provinciæ Cantuar' et Ebor' jure ecclesiarum nostrarum et temporalium earundem habentes jus interessendi in singulis parliamentis* domini nostri regis et regni Angliæ pro tempore celebrandis, necnon tractandi et expediendi in eisdem quantum ad singula in instanti parliamento pro statu et honore domini nostri regis, necnon regaliæ suæ, ac quiete, pace, et tranquillitate regni judicialiter justificandis, venerabili viro domino Thomæ de Percy militi, nostram plenarie committimus potestatem." It may be perceived by these expressions, and more unequivocally by the nature of the case, that it was the judicial power of Parliament which the spiritual lords delegated to their proxy. Many impeachments for capital offences were coming on, at which, by their canons, the bishops could not assist. But it can never be conceived that the inferior clergy had any share in this high judicature. And, upon looking attentively at the words above printed in italics, it will be evident that the spiritual lords holding by barony are the only persons designated; whatever may have been meant by the singular phrase, as applied to them, clerus utriusque provinciæ. ("Rot. Parl.," vol. iii, p. 348.)

second of Henry IV, which can hardly be deemed anything else than an infringement of the rights of Parliament, more clearly established at that time than at the accession of Richard II. Petitions of the commons relative to spiritual matters, however frequently proposed, in few or no instances obtained the king's assent so as to pass into statutes, unless approved by the convocation.[557] But, on the other hand, scarcely any temporal laws appear to have passed by the concurrence of the clergy. Two instances only, so far as I know, are on record: the Parliament held in the eleventh of Richard II is annulled by that in the twenty-first of his reign, "with the assent of the lords spiritual and temporal, and the proctors of the clergy, and the commons";[558] and the statute entailing the crown on the children of Henry IV is said to be enacted on the petition of the prelates, nobles, clergy, and commons.[559] Both these were stronger exertions of legislative authority than ordinary acts of Parliament, and were very likely to be questioned in succeeding times.

The supreme judicature, which had been exercised by the king's court, was diverted, about the reign of John, into three channels: the tribunals of King's Bench, Common Pleas, and the exchequer.[560] These became the regular fountains of justice, which soon almost absorbed the provincial jurisdictions of the sheriff and lord of manor. But the original institution, having been designed for ends of state, police, and revenue, full as much as for the determination of private suits, still preserved the most eminent parts of its authority. For the king's ordinary or privy council, which is the usual style from the reign of Edward I, seems to have been no other than the king's court (curia regis) of older times, being composed of the same persons, and having, in a principal degree, the same subjects of deliberation. It consisted of the chief ministers, as the chancellor, treasurer, lord steward, lord admiral, lord marshal, the keeper of the privy seal, the chamberlain, treasurer, and comptroller of the household, the chancellor of the exchequer, the master of the wardrobe; and of the judges, king's sergeant, and attorney general, the master of the rolls, and justices in eyre, who at that time were not the same as the judges at Westminster. When all these were called together, it was a full council; but where the business was of a more contracted nature, those only who were fittest to advise were summoned: the chancellor and judges for matters of law, the officers of state for what concerned the revenue or household.[561]

[557] Atterbury, p. 346.

[558] 21 R. II, c. 12. Burnet's "Hist. of Reformation" (vol. ii, p. 47) led me to this act, which I had overlooked.

[559] "Rot. Parl.," vol. iii, p. 582. Atterbury, p. 61.

[560] The ensuing sketch of the jurisdiction exercised by the king's council has been chiefly derived from Sir Matthew Hale's "Treatise of the Jurisdiction of the Lords' House in Parliament," published by Mr. Hargrave.

[561] The words "privy council" are said not to be used till after the reign of

The business of this council, out of Parliament, may be reduced to two heads: its deliberative office as a council of advice, and its decisive power of jurisdiction. With respect to the first, it obviously comprehended all subjects of political deliberation, which were usually referred to it by the king; this being, in fact, the administration or governing council of state, the distinction of a cabinet being introduced in comparatively modern times. But there were likewise a vast number of petitions continually presented to the council, upon which they proceeded no further than to sort, as it were, and forward them by indorsement to the proper courts, or advise the suitor what remedy he had to seek. Thus some petitions are answered, "This can not be done without a new law"; some were turned over to the regular court, as the chancery or King's Bench; some of greater moment were indorsed to be heard "before the great council"; some, concerning the king's interest, were referred to the chancery or select persons of the council.

The coercive authority exercised by this standing council of the king was far more important. It may be divided into acts, legislative and judicial. As for the first, many ordinances were made in council; sometimes upon request of the commons in Parliament, who felt themselves better qualified to state a grievance than a remedy; sometimes without any pretence, unless the usage of government, in the infancy of our constitution, may be thought to afford one. These were always of a temporary or partial nature, and were considered as regulations not sufficiently important to demand a new statute. Thus, in the second year of Richard II, the council, after hearing read the statute roll of an act recently passed, conferring a criminal jurisdiction in certain cases upon justices of the peace, declared that the intention of Parliament, though not clearly expressed therein, had been to extend that jurisdiction to certain other cases omitted, which accordingly they cause to be inserted in the commissions made to these justices under the great seal.[562] But they frequently so much exceeded what the growing spirit of public liberty would permit that it gave rise to complaint in Parliament. The commons petition in 13 Richard II that "neither the chancellor nor the king's council, after the close of Parliament, may make any ordinance against the common law, or the ancient customs of the

Henry VI; the former style was "ordinary" or "continual council." But a distinction had always been made, according to the nature of the business; the great officers of state, or, as we might now say, the ministers, had no occasion for the presence of judges or any lawyers in the secret councils of the crown. They become, therefore, a council of government, though always members of the concilium ordinarium; and, in the former capacity, began to keep formal records of their proceedings. The acts of this council, though, as I have just said, it bore as yet no distinguishing name, are extant from the year 1386, and for seventy years afterward are known through the valuable publication of Sir Harris Nicolas.

[562] "Rot. Parl.," vol. iii, p. 84.

land, or the statutes made heretofore or to be made in this Parliament; but that the common law have its course for all the people, and no judgment be rendered without due legal process." The king answers: "Let it be done as has been usual heretofore, saving the prerogative; and if any one is aggrieved, let him show it specially, and right shall be done him." [563] This unsatisfactory answer proves the arbitrary spirit in which Richard was determined to govern.

The judicial power of the council was in some instances founded upon particular acts of Parliament, giving it power to hear and determine certain causes. Many petitions likewise were referred to it from Parliament, especially where they were left unanswered by reason of a dissolution. But, independently of this delegated authority, it is certain that the king's council did anciently exercise, as well out of Parliament as in it, a very great jurisdiction, both in causes criminal and civil. Some, however, have contended, that whatever they did in this respect was illegal, and an encroachment upon the common law and Magna Charta. And be the common law what it may, it seems an indisputable violation of the charter, in its most admirable and essential article, to drag men in questions of their freehold or liberty before a tribunal which neither granted them a trial by their peers nor always respected the law of the land. Against this usurpation the patriots of those times never ceased to lift their voices. A statute of the fifth year of Edward III provides that no man shall be attached, nor his property seized into the king's hands, against the form of the Great Charter and the law of the land. In the twenty-fifth of the same king it was enacted that "none shall be taken by petition or suggestion to the king or his council, unless it be by indictment or presentment, or by writ original at the common law, nor shall be put out of his franchise or freehold, unless he be duly put to answer, and forejudged of the same by due course of law." [564] This was repeated in a short act of the twenty-eighth of his reign; [565] but both, in all probability, were treated with neglect; for another was passed some years afterward, providing that no man shall be put to answer without presentment before justices, or matter of record, or by due process and writ original according to the old law of the land. The answer to the petition whereon this statute is grounded, in the Parliament roll, expressly declares this to be an article of the

[563] "Rot. Parl.," vol. iii, p. 266.

[564] 25 E. III, stat. 5, c. 4. Probably this fifth statute of the twenty-fifth of Edward III is the most extensively beneficial act in the whole body of our laws. It established certainty in treasons, regulated purveyance, prohibited arbitrary imprisonment and the determination of pleas of freehold before the council, took away the compulsory finding of men-at-arms and other troops, confirmed the reasonable aid of the king's tenants fixed by 3 E. I, and provided that the king's protection should not hinder civil process or execution.

[565] 28 E. III, c. 3.

Great Charter.[566] Nothing, however, would prevail on the council to surrender so eminent a power, and, though usurped, yet of so long a continuance. Cases of arbitrary imprisonment frequently occurred, and were remonstrated against by the commons. The right of every freeman in that cardinal point was as indubitable, legally speaking, as at this day; but the courts of law were afraid to exercise their remedial functions in defiance of so powerful a tribunal. After the accession of the Lancastrian family, these, like other grievances, became rather less frequent, but the commons remonstrate several times, even in the minority of Henry VI, against the council's interference in matters cognizable at common law.[567] In these later times the civil jurisdiction of the council was principally exercised in conjunction with the chancery, and accordingly they are generally named together in the complaint. The chancellor having the great seal in his custody, the council usually borrowed its process from his court. This was returnable into chancery even where the business was depending before the council. Nor were the two jurisdictions less intimately allied in their character, each being of an equitable nature; and equity, as then practised, being little else than innovation and encroachment on the course of law. This part, long since the most important of the chancellor's judicial function, can not be traced beyond the time of Richard II, when, the practice of feoffments to uses having been introduced, without any legal remedy to secure the cestui que use, or usufructuary, against his feoffees, the court of chancery undertook to enforce this species of contract by process of its own.[568]

Such was the nature of the king's ordinary council in itself,

[566] 42 E. III, c. 3, and "Rot. Parl.," vol. ii, p. 295. It is not surprising that the king's council should have persisted in these transgressions of their lawful authority, when we find a similar jurisdiction usurped by the officers of inferior persons. Complaint is made in the eighteenth of Richard II that men were compelled to answer before the council of divers lords and ladies, for their freeholds and other matters cognizable at common law, and a remedy for this abuse is given by petition in chancery, stat. 15, R. II, c. 12. This act is confirmed with a penalty on its contraveners the next year, 16 R. II, c. 2. The private jails which some lords were permitted by law to possess, and for which there was always a provision in their castles, enabled them to render this oppressive jurisdiction effectual.

[567] "Rot. Parl," 17 R. II, vol. iii, p. 319; 4 H. IV, p. 507; 1 H. VI, vol. iv, p. 189; 3 H. VI, p. 292; 8 H. VI, p. 343; 10 H. VI, p. 403; 15 H. VI, p. 501. To one of these (10 H. VI), "that none should be put to answer for his freehold in Parliament, nor before any court or council where such things are not cognizable by the law of the land," the king gave a denial. As it was less usual to refuse promises of this kind than to forget them afterward, I do not understand the motive of this.

[568] Hale's "Jurisdiction of Lords' House," p. 46. Coke, 2 Inst., p. 553. The last author places this a little later. There is a petition of the commons, in the roll of the 4th of Henry IV, p. 511, that, whereas many grantees and feoffees in trust for their grantors and feoffers alienate or charge the tenements granted, in which case there is no remedy unless one is ordered by Parliament, that the king and lords would provide a remedy. This petition is referred to the king's council to advise of a remedy against the ensuing Parliament. It may perhaps be inferred from hence that the writ of subpœna out of chancery had not yet been applied to protect the cestui que use. But it is equally possible that the commons, being disinclined to what they would deem an illegal innovation, were endeavouring to reduce these fiduciary estates within the pale of the common law, as was afterward done by the statute of uses. [Note X.]

as the organ of his executive sovereignty, and such the jurisdiction which it habitually exercised. But it is also to be considered in its relation to the Parliament, during whose session, either singly or in conjunction with the lords' House, it was particularly conspicuous. The great officers of state, whether peers or not, the judges, the king's sergeant, and attorney-general, were, from the earliest times, as the latter still continue to be, summoned by special writs to the upper House. But while the writ of a peer runs ad tractandum nobiscum et cum cæteris prælatis, magnatibus et proceribus, that directed to one of the judges is only ad tractandum nobiscum et cum cæteris de consilio nostro; and the seats of the latter are upon the woolsacks at one extremity of the House.

In the reigns of Edward I and II the council appear to have been the regular advisers of the king in passing laws to which the Houses of Parliament had assented. The preambles of most statutes during this period express their concurrence. Thus the statute Westm. I is said to be the act of the king by his council, and by the assent of archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the realm being hither summoned. The statute of escheators, 29 Edward I, is said to be agreed by the council, enumerating their names, all whom appear to be judges or public officers. Still more striking conclusions are to be drawn from the petitions addressed to the council by both Houses of Parliament. In 8 Edward II there are four petitions from the commons to the king and his council, one from the lords alone, and one in which both appear to have joined. Later Parliaments of the same reign present us with several more instances of the like nature. Thus in 18 Edward II a petition begins, "To our lord the king, and to his council, the archbishops, bishops, prelates, earls, barons, and others of the commonalty of England, show," etc.[569]

But from the beginning of Edward III's reign it seems that the council and the Lords' House in Parliament were often blended together into one assembly. This was denominated the great council, being the lords spiritual and temporal, with the king's ordinary council annexed to them, as a council within a council. And even in much earlier times the lords, as hereditary counsellors, were, either whenever they thought fit to attend, or on special summonses by the king (it is hard to say which), assistant members of this council, both for advice and for jurisdiction. This double capacity of the peerage, as members of the Parliament or legislative assembly and of the deliberative and judicial council, throws a very great obscurity over the subject. However, we find that private petitions for redress were, even

[569] "Rot. Parl.," vol. i, p. 416.

under Edward I, presented to the lords in Parliament as much as to the ordinary council. The Parliament was considered a high court of justice, where relief was to be given in cases where the course of law was obstructed, as well as where it was defective. Hence the intermission of Parliaments was looked upon as a delay of justice, and their annual meeting is demanded upon that ground. "The king," says Fleta, "has his court in his council, in his Parliaments, in the presence of bishops, earls, barons, lords, and other wise men, where the doubtful cases of judgments are resolved, and new remedies are provided against new injuries, and justice is rendered to every man according to his desert." [570] In the third year of Edward II receivers of petitions began to be appointed at the opening of every Parliament, who usually transmitted them to the ordinary, but in some instances to the great council. These receivers were commonly three for England, and three for Ireland, Wales, Gascony, and other foreign dominions. There were likewise two corresponding classes of auditors or triers of petitions. These consisted partly of bishops or peers, partly of judges and other members of the council, and they seem to have been instituted in order to disburden the council by giving answers to some petitions. But about the middle of Edward III's time they ceased to act juridically in this respect, and confined themselves to transmitting petitions to the lords of the council.

The great council, according to the definition we have given, consisting of the lords spiritual and temporal, in conjunction with the ordinary council, or, in other words, of all who were severally summoned to Parliament, exercised a considerable jurisdiction, as well civil as criminal. In this jurisdiction it is the opinion of Sir M. Hale that the council, though not peers, had right of suffrage; an opinion very probable when we recollect that the council by themselves, both in and out of Parliament, possessed, in fact, a judicial authority little inferior; and that the king's delegated sovereignty in the administration of justice, rather than any intrinsic right of the peerage, is the foundation on which the judicature of the lords must be supported. But in the time of Edward III or Richard II the lords, by their ascendency, threw the judges and rest of the council into shade, and took the decisive jurisdiction entirely to themselves, making use of their former colleagues but as assistants and advisers, as they still continue to be held in all the judicial proceedings of that House.[571]

Those statutes which restrain the king's ordinary council from disturbing men in their freehold rights, or questioning them for misdemeanours, have an equal application to the Lords'

[570] L. ii, c. 2. [571] [Note XI.]

House in Parliament, though we do not frequently meet with complaints of the encroachments made by that assembly. There was, however, one class of cases tacitly excluded from the operation of those acts, in which the coercive jurisdiction of this high tribunal had great convenience—namely, where the ordinary course of justice was so much obstructed by the defending party, through riots, combinations of maintenance, or overawing influence, that no inferior court could find its process obeyed. Those ages, disfigured in their quietest season by rapine and oppression, afforded no small number of cases that called for this interposition of a paramount authority.[572] Another indubitable branch of this jurisdiction was in writs of error; but it may be observed that their determination was very frequently left to a select committee of peers and councillors. These, too, cease almost entirely with Henry IV, and were scarcely revived till the accession of James I.

Some instances occur in the reign of Edward III where records have been brought into Parliament, and annulled with assent of the commons as well as the rest of the legislature.[573]

[572] This is remarkably expressed in one of the articles agreed in Parliament 8 H. VI for the regulation of the council. "Item, that alle the billes that comprehend matters terminable atte the common lawe shall be remitted ther to be determined; but if so be that the discresion of the counseill fele to grete myght on that ō syde, and unmyght on that other, or elles other cause resonable yat shal move him." ("Rot. Parl.," vol. iv, p. 343.) Mr. Bruce has well observed of the articles agreed upon in 8 Hen. VI, or rather of "those in 5 Hen. VI, which were nearly the same, that in theory nothing could be more excellent. In turbulent times, it is scarcely necessary to remark, great men were too apt to weigh out justice for themselves, and with no great nicety; a court, therefore, to which the people might fly for relief against powerful oppressors, was most especially needful. Law charges also were considerable; and this, 'the poor man's court, in which he might have right without paying any money' (Sir T. Smith's 'Commonwealth,' book iii, ch. 7), was an institution apparently calculated to be of unquestionable utility. It was the comprehensiveness of the last clause—the 'other cause reasonable'—which was its ruin." (Archæologia, vol. xxv, p. 348.) The statute 31 Hen. VI, c. 2, which is not printed in Ruffhead's edition, is very important, as giving a legal authority to the council, by writs under the great seal, and by writs of proclamation to the sheriffs, on parties making default, to compel the attendance of any persons complained of for "great riots, extortions, oppressions, and grievous offences," under heavy penalties; in case of a peer, "the loss of his estate, and name of lord, and his place in Parliament," and all his lands for the term of his life; and fine at discretion in the case of other persons. A proviso is added that no matter determinable by the law of the realm should be determined in other form than after the course of law in the king's courts. Sir Francis Palgrave ("Essay on the King's Council," p. 84) observes that this proviso "would in no way interfere with the effective jurisdiction of the council, inasmuch as it could always be alleged in the bills which were preferred before it that the oppressive and grievous offences of which they complained were not determinable by the ordinary course of the common law" (p. 86). But this takes the word "determinable" to mean in fact; whereas I apprehend that the proviso must be understood to mean cases legally determinable; the words, I think, will bear no other construction. But as all the offences enumerated were indictable, we must either hold the proviso to be utterly inconsistent with the rest of the statute, or suppose that the words "other form" were intended to prohibit the irregular process usual with the council; secret examination of witnesses, torture, neglect of technical formality in specifying charges, punishments not according to the course of law, and other violations of fair and free trial, which constituted the greatest grievance in the proceedings of the council.

[573] The judgment against Mortimer was reversed at the suit of his son, 28 E. III, because he had not been put on his trial. The peers had adjudged him to death in his absence, upon common notoriety of his guilt. (4 E. III, p. 53.) In the same session of 28 E. III the Earl of Arundel's attainder was also reversed, which had passed in 1 E. III,

But these were attainders of treason, which it seemed gracious and solemn to reverse in the most authentic manner. Certainly the commons had neither by the nature of our constitution nor the practice of Parliament any right of intermeddling in judicature, save where something was required beyond the existing law, or where, as in the statute of treason, an authority of that kind was particularly reserved to both Houses. This is fully acknowledged by themselves in the first year of Henry IV.[574] But their influence upon the balance of government became so commanding in a few years afterward that they contrived, as has been mentioned already, to have petitions directed to them, rather than to the lords or council, and to transmit them, either with a tacit approbation or in the form of acts, to the upper House. Perhaps this encroachment of the commons may have contributed to the disuse of the lords' jurisdiction, who would rather relinquish their ancient and honourable but laborious function than share it with such bold usurpers.

Although the restraining hand of Parliament was continually growing more effectual, and the notions of legal right acquiring more precision, from the time of Magna Charta to the civil wars under Henry VI, we may justly say that the general tone of administration was not a little arbitrary. The whole fabric of English liberty rose step by step, through much toil and many sacrifices, each generation adding some new security to the work, and trusting that posterity would perfect the labour as well as enjoy the reward. A time, perhaps, was even then foreseen in the visions of generous hope, by the brave knights of Parliament and by the sober sages of justice, when the proudest ministers of the crown should recoil from those barriers which were then daily pushed aside with impunity.

There is a material distinction to be taken between the exercise of the king's undeniable prerogative, however repugnant to our improved principles of freedom, and the abuse or extension of it to oppressive purposes. For we can not fairly consider as part of our ancient constitution what the Parliament was perpetually remonstrating against, and the statute-book is full of enactments to repress. Doubtless the continual acquiescence of a nation in arbitrary government may ultimately destroy all privileges of positive institution, and leave them to recover, by such means as opportunity shall offer, the natural and imprescriptible rights for which human societies were established. And this may perhaps be the case at present with many European kingdoms. But it would be necessary to shut our eyes with deliber-

when Mortimer was at the height of his power. These precedents taken together seem to have resulted from no partiality, but a true sense of justice in respect of treasons, animated by the recent statute. ("Rot. Parl.," vol. ii, p. 256.)

[574] "Rot. Parl.," vol. iii, p. 427.

ate prejudice against the whole tenor of the most unquestionable authorities, against the petitions of the commons, the acts of the legislature, the testimony of historians and lawyers, before we could assert that England acquiesced in those abuses and oppressions which it must be confessed she was unable fully to prevent.

The word prerogative is of a peculiar import, and scarcely understood by those who come from the studies of political philosophy. We can not define it by any theory of executive functions. All these may be comprehended in it, but also a great deal more. It is best, perhaps, to be understood by its derivation, and has been said to be that law in case of the king which is law in no case of the subject.[575] Of the higher and more sovereign prerogatives I shall here say nothing; they result from the nature of a monarchy, and have nothing very peculiar in their character. But the smaller rights of the crown show better the original lineaments of our constitution. It is said commonly enough that all prerogatives are given for the subject's good. I must confess that no part of this assertion corresponds with my view of the subject. It neither appears to me that these prerogatives were ever given nor that they necessarily redound to the subject's good. Prerogative, in its old sense, might be defined an advantage obtained by the crown over the subject, in cases where their interests came into competition, by reason of its greater strength. This sprang from the nature of the Norman government, which rather resembled a scramble of wild beasts, where the strongest takes the best share, than a system founded upon principles of common utility. And, modified as the exercise of most prerogatives has been by the more liberal tone which now pervades our course of government, whoever attends to the common practice of courts of justice, and, still more, whoever consults the law-books, will not only be astonished at their extent and multiplicity, but very frequently at their injustice and severity.

The real prerogatives that might formerly be exerted were sometimes of so injurious a nature that we can hardly separate them from their abuse: a striking instance is that of purveyance, which will at once illustrate the definition above given of a prerogative, the limits within which it was to be exercised, and its tendency to transgress them. This was a right of purchasing whatever was necessary for the king's household, at a fair price, in preference to every competitor, and without the consent of the owner. By the same prerogative, carriages and horses were impressed for the king's journeys, and lodgings provided for his attendants. This was defended on a pretext of necessity, or at

[575] Blackstone's "Comment.," from Finch, vol. i, c. 7.

least of great convenience to the sovereign, and was both of high antiquity and universal practice throughout Europe. But the royal purveyors had the utmost temptation, and doubtless no small store of precedents, to stretch this power beyond its legal boundary; and not only to fix their own price too low, but to seize what they wanted without any payment at all, or with tallies which were carried in vain to an empty exchequer.[576] This gave rise to a number of petitions from the commons, upon which statutes were often framed; but the evil was almost incurable in its nature, and never ceased till that prerogative was itself abolished. Purveyance, as I have already said, may serve to distinguish the defects from the abuses of our constitution. It was a reproach to the law that men should be compelled to sell their goods without their consent; it was a reproach to the administration that they were deprived of them without payment.

The right of purchasing men's goods for the use of the king was extended by a sort of analogy to their labour. Thus Edward III announces to all sheriffs that William of Walsingham had a commission to collect as many painters as might suffice for "our works in St. Stephen's Chapel, Westminster, to be at our wages as long as shall be necessary," and to arrest and keep in prison all who should refuse or be refractory, and enjoins them to lend their assistance.[577] Windsor Castle owes its massive magnificence to labourers impressed from every part of the kingdom. There is even a commission from Edward IV to take as many workmen in gold as were wanting, and employ them at the king's cost upon the trappings of himself and his household.[578]

Another class of abuses intimately connected with unquestionable though oppressive rights of the crown originated in the feudal tenure which bound all the lands of the kingdom. The king had indisputably a right to the wardship of his tenants in chivalry, and to the escheats or forfeitures of persons dying without heirs or attainted for treason. But his officers, under pretence of wardship, took possession of lands not held immediately of the crown, claimed escheats where a right heir existed, and seized estates as forfeited which were protected by the statute of entails. The real owner had no remedy against this disposition

[576] Letters are directed to all the sheriffs, 2 E. I, enjoining them to send up a certain number of beeves, sheep, capons, etc., for the king's coronation. (Rymer, vol. ii, p. 21.) By the statute 21 E. III, c. 12, goods taken by the purveyors were to be paid for on the spot if under twenty shillings' value, or within three months' time if above that value. But it is not to be imagined that this law was or could be observed.

Edward III, impelled by the exigencies of his French war, went still greater lengths, and seized larger quantities of wool, which he sold beyond sea, as well as provisions for the supply of his army. In both cases the proprietors had tallies, or other securities; but their despair of obtaining payment gave rise, in 1338, to an insurrection. There is a singular apologetical letter of Edward to the archbishops on this occasion. (Rymer, tome v, p. 10; see also p. 73, and Knyghton, col. 2570.)

[577] Rymer, tome vi, p. 417.

[578] Rymer, tome xi, p. 852.

but to prefer his petition of right in chancery, or, which was probably more effectual, to procure a remonstrance of the House of Commons in his favour. Even where justice was finally rendered to him he had no recompense for his damages, and the escheators were not less likely to repeat an iniquity by which they could not personally suffer.

The charter of the forests, granted by Henry III along with Magna Charta,[579] had been designed to crush the flagitious system of oppression which prevailed in those favourite haunts of the Norman kings. They had still, however, their peculiar jurisdiction, though, from the time at least of Edward III, subject in some measure to the control of the King's Bench.[580] The foresters, I suppose, might find a compensation for their want of the common law in that easy and licentious way of life which they affected; but the neighbouring cultivators frequently suffered from the king's officers who attempted to recover those adjacent lands, or, as they were called, purlieus, which had been disafforested by the charter and protected by frequent perambulations. Many petitions of the commons relate to this grievance.

The constable and marshal of England possessed a jurisdiction, the proper limits whereof were sufficiently narrow, as it seems, to have extended only to appeals of treason committed beyond sea, which were determined by combat, and to military offences within the realm. But these high officers frequently took upon them to inquire of treasons and felonies cognizable at common law, and even of civil contracts and trespasses. This is no bad illustration of the state in which our constitution stood under the Plantagenets. No colour of right or of supreme prerogative was set up to justify a procedure so manifestly repugnant to the Great Charter. For all remonstrances against these encroachments the king gave promises in return; and a statute was enacted, in the thirteenth of Richard II, declaring the bounds of the constable and marshal's jurisdiction.[581] It could not be denied, therefore, that all infringements of these acknowledged limits were illegal, even if they had a hundredfold more actual precedents in their favour than can be supposed. But the abuse by no means ceased after the passing of this statute, as several subsequent petitions that it might be better regarded will evince. One, as

[579] Matthew Paris asserts that John granted a separate forest charter, and supports his position by asserting that of Henry III at full length. In fact, the clauses relating to the forest were incorporated with the Great Charter of John. Such an error as this shows the precariousness of historical testimony, even where it seems to be best grounded.

[580] Coke, fourth "Inst.," p. 294. The forest domain of the king, says the author of the dialogue on the Exchequer under Henry II, is governed by its own laws, not founded on the common law of the land, but the voluntary enactment of princes: so that whatever is done by that law is reckoned not legal in itself, but legal according to forest law, p. 29, non justum absolutè, sed justum secundùm legem forestæ dicatur. I believe my translation of justum is right; for he is not writing satirically.

[581] 13 R. II, c. 2.

it contains a special instance, I shall insert. It is of the fifth year of Henry IV: "On several supplications and petitions made by the commons in Parliament to our lord the king for Bennet Wilman, who is accused by certain of his ill-wishers and detained in prison, and put to answer before the constable and marshal, against the statutes and the common law of England, our said lord the king, by the advice and assent of the lords in Parliament, granted that the said Bennet should be treated according to the statutes and common law of England, notwithstanding any commission to the contrary, or accusation against him made before the constable and marshal." And a writ was sent to the justices of the King's Bench with a copy of this article from the roll of Parliament, directing them to proceed as they shall see fit according to the laws and customs of England.[582]

It must appear remarkable that, in a case so manifestly within their competence, the Court of King's Bench should not have issued a writ of habeas corpus, without waiting for what may be considered as a particular act of Parliament. But it is a natural effect of an arbitrary administration of government to intimidate courts of justice.[583] A negative argument, founded upon the want of legal precedent, is certainly not conclusive when it relates to a distant period, of which all the precedents have not been noted; yet it must strike us that in the learned and zealous arguments of Sir Robert Cotton, Mr. Selden, and others, against arbitrary imprisonment, in the great case of the habeas corpus, though the statute law is full of authorities in their favour, we find no instance adduced earlier than the reign of Henry VII, where the King's Bench has released, or even bailed, persons committed by the council or the constable, though it is unquestionable that such committals were both frequent and illegal.[584]

[582] "Rot. Parl.," vol. iii, p. 530.

[583] The apprehension of this compliant spirit in the ministers of justice led to an excellent act in 2 E. III, c. 8, that the judges shall not omit to do right for any command under the great or privy seal. And the conduct of Richard II, who sought absolute power by corrupting or intimidating them, produced another statute in the eleventh year of his reign (c. 10), providing that neither letters of the king's signet nor of the privy seal should from thenceforth be sent in disturbance of the law. An ordinance of Charles V, King of France, in 1369, directs the Parliament of Paris to pay no regard to any letters under his seal suspending the course of legal procedure, but to consider them as surreptitiously obtained. (Villaret, tome x, p. 175.) This ordinance, which was sedulously observed, tended very much to confirm the independence and integrity of that tribunal.

[584] Cotton's "Posthuma," p. 221. Howell's "State Trials," vol. iii, p. 1. Hume quotes a grant of the office of constable to the Earl of Rivers in 7 E. IV, and infers, unwarrantably enough, that "its authority was in direct contradiction to Magna Charta and it is evident that no regular liberty could subsist with it. It involved a full dictatorial power, continually subsisting in the state." ("Hist. of England," c. 22.) But by the very words of this patent the jurisdiction given was only over such causes quæ in curiâ constabularii Angliæ ab antiquo, viz. tempore dicti Gulielmi conquæstoris, seu aliquo tempore citra, tractari, audiri, examinari, aut decidi consueverunt aut jure debuerant aut debent. These are expressed, though not very perspicuously, in the statute 13 R. II, c. 2, that declares the constable's jurisdiction. And the chief criminal matter reserved by law to the court of this officer was treason committed out of the kingdom. In violent and revolutionary seasons, such as the commencement of Edward IV's reign, some persons were tried by martial law before the con-

If I have faithfully represented thus far the history of our constitution, its essential character will appear to be a monarchy greatly limited by law, though retaining much power that was ill calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. But of all the notions that have been advanced as to the theory of this constitution, the least consonant to law and history is that which represents the king as merely an hereditary executive magistrate, the first officer of the state. What advantages might result from such a form of government this is not the place to discuss. But it certainly was not the ancient constitution of England. There was nothing in this, absolutely nothing, of a republican appearance. All seemed to grow out of the monarchy, and was referred to its advantage and honour. The voice of supplication, even in the stoutest disposition of the commons, was always humble; the prerogative was always named in large and pompous expressions. Still more naturally may we expect to find in the law-books even an obsequious deference to power, from judges who scarcely ventured to consider it as their duty to defend the subject's freedom, and who beheld the gigantic image of prerogative, in the full play of its hundred arms, constantly before their eyes. Through this monarchical tone, which certainly pervades all our legal authorities, a writer like Hume, accustomed to philosophical liberality as to the principles of government, and to the democratical language which the modern aspect of the constitution and the liberty of printing have produced, fell hastily into the error of believing that all limitations of royal power during the fourteenth and fifteenth centuries were as much unsettled in law and in public opinion as they were liable to be violated by force. Though a contrary position has been sufficiently demonstrated, I conceive, by the series of parliamentary proceedings which I have already produced, yet there is a passage in Sir John Fortescue's treatise, "De Laudibus Legum Angliæ," so explicit and weighty that no writer on the English constitution can be excused from inserting it. This eminent person, having been chief justice of the King's Bench under Henry VI, was governor to the young Prince of Wales during his retreat in France, and received at his hands the office of chancellor. It must never be forgotten that, in a treatise purposely composed for the instruction of one who hoped to reign over England, the limitations of government are enforced as strenuously by Fortescue as some succeeding lawyers have inculcated the doctrines of arbitrary prerogative.

"A King of England can not at his pleasure make any altera-

stable. But, in general, the exercise of criminal justice by this tribunal, though one of the abuses of the times, can not be said to warrant the strong language adopted by Hume.

tions in the laws of the land, for the nature of his government is not only regal but political. Had it been merely regal, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose tallages and other hardships upon the people whether they would or no, without their consent, which sort of government the civil laws point out when they declare Quod principi placuit, legis habet vigorem. But it is much otherwise with a king whose government is political, because he can neither make any alteration or change in the laws of the realm without the consent of the subjects, nor burden them against their wills with strange impositions, so that a people governed by such laws as are made by their own consent and approbation enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other. The same things may be effected under an absolute prince, provided he do not degenerate into the tyrant. Of such a prince, Aristotle, in the third of his 'Politics,' says, 'It is better for a city to be governed by a good man than by good laws.' But because it does not always happen that the person presiding over a people is so qualified, St. Thomas, in the book which he writ to the King of Cyprus, 'De Regimine Principum,' wishes that a kingdom could be so instituted as that the king might not be at liberty to tyrannize over his people; which only comes to pass in the present case—that is, when the sovereign power is restrained by political laws. Rejoice, therefore, my good prince, that such is the law of the kingdom which you are to inherit, because it will afford, both to yourself and subjects, the greatest security and satisfaction." [585]

The two great divisions of civil rule, the absolute, or regal, as he calls it, and the political, Fortescue proceeds to deduce from the several originals of conquest and compact. Concerning the latter, he declares emphatically a truth not always palatable to princes, that such governments were instituted by the people, and for the people's good, quoting St. Augustin for a similar definition of a political society: "As the head of a body natural can not change its nerves and sinews, can not deny to the several parts their proper energy, their due proportion and aliment of blood, neither can a king, who is the head of a body politic, change the laws thereof, nor take from the people what is theirs by right against their consent. Thus you have, sir, the formal institution of every political kingdom, from whence you may guess at the power which a king may exercise with respect to the laws and the subject. For he is appointed to protect his subjects in their lives, properties, and laws; for this very end and purpose he has the delegation of power from the people,

[585] Fortescue, "De Laudibus Legum Angliæ," c. 9.

and he has no just claim to any other power but this. Wherefore, to give a brief answer to that question of yours, concerning the different powers which kings claim over their subjects, I am firmly of opinion that it arises solely from the different natures of their original institution, as you may easily collect from what has been said. So the kingdom of England had its original from Brute, and the Trojans, who attended him from Italy and Greece, and became a mixed kind of government, compounded of the regal and political." [586]

It would occupy too much space to quote every other passage of the same nature in this treatise of Fortescue, and in that entitled "Of the Difference between an Absolute and Limited Monarchy," which, so far as these points are concerned, is nearly a translation from the former.[587] But these, corroborated as they are by the statute-book and by the rolls of Parliament, are surely conclusive against the notions which pervade Mr. Hume's history. I have already remarked that a sense of the glaring prejudice by which some Whig writers had been actuated, in representing the English constitution from the earliest times as nearly arrived at its present perfection, conspired with certain prepossessions of his own to lead this eminent historian into an equally erroneous system on the opposite side. And as he traced the stream backward, and came last to the times of the Plantagenet dynasty, with opinions already biassed and even pledged to the world in his volumes of earlier publication, he was prone to seize hold of, and even exaggerate, every circumstance that indicated immature civilization, and law perverted or infringed.[588] To this his ignorance of English jurisprudence, which certainly in some measure disqualified him from writing our history, did not a little contribute, misrepresentations frequently occurring in his work, which a moderate acquaintance with the law of the land would have prevented.[589]

It is an honourable circumstance to England that the history

[586] Fortescue, "De Laudibus Legum Angliæ," c. 13.

[587] The latter treatise having been written under Edward IV, whom Fortescue, as a restored Lancastrian, would be anxious not to offend, and whom in fact he took some pains to conciliate both in this and other writings, it is evident that the principles of limited monarchy were as fully recognised in his reign, whatever particular acts of violence might occur, as they had been under the Lancastrian princes.

[588] The following is one example of these prejudices: In the 9th of Richard II a tax on wool granted till the ensuing feast of St. John Baptist was to be intermitted from thence to that of St. Peter, and then to recommence; that it might not be claimed as a right. ("Rot. Parl.," vol. iii, p. 214.) Mr. Hume has noticed this provision, as "showing an accuracy beyond what was to be expected in those rude times." In this epithet we see the foundation of his mistakes. The age of Richard II might perhaps be called rude in some respects. But assuredly in prudent and circumspect perception of consequences, and an accurate use of language, there could be no reason why it should be deemed inferior to our own. If Mr. Hume had ever deigned to glance at the legal decisions reported in the Year-books of those times, he would have been surprised, not only at the utmost accuracy, but at a subtle refinement in verbal logic, which none of his own metaphysical treatises could surpass.

[589] [Note XII.]

of no other country presents so few instances of illegal condemnation upon political charges. The judicial torture was hardly known and never recognised by law.[590] The sentence in capital crimes, fixed unalterably by custom, allowed nothing to vindictiveness and indignation. There hardly occurs an example of any one being notoriously put to death without form of trial, except in moments of flagrant civil war. If the rights of juries were sometimes evaded by irregular jurisdictions, they were at least held sacred by the courts of law: and through all the vicissitudes of civil liberty no one ever questioned the primary right of every freeman, handed down from his Saxon forefathers, to the trial by his peers. A just regard for public safety prescribes the necessity of severe penalties against rebellion and conspiracy; but the interpretation of these offences, when intrusted to sovereigns and their counsellors, has been the most tremendous instrument of despotic power. In rude ages, even though a general spirit of political liberty may prevail, the legal character of treason will commonly be undefined; nor is it the disposition of lawyers to give greater accuracy to this part of criminal jurisprudence. The nature of treason appears to have been subject to much uncertainty in England before the statute of Edward III. If that memorable law did not give all possible precision to the offence, which we must certainly allow, it prevented at least those stretches of vindictive tyranny which disgrace the annals of other countries. The praise, however, must be understood as comparative. Some cases of harsh, if not illegal, convictions could hardly fail to occur in times of violence and during changes of the reigning family. Perhaps the circumstances have now and then been aggravated by historians. Nothing could be more illegal than the conviction of the Earl of Cambridge and Lord Scrope in 1415, if it be true, according to Carte and Hume, that they were not heard in their defence. But whether this is to be absolutely inferred from the record [591] is perhaps open to question. There seems at least to have been no sufficient motive for such an irregularity; their participation in a treasonable conspiracy being manifest from their own confession. The proceedings against Sir John Mortimer in the second of Henry VI [592] are called by Hume highly irregular and illegal. They were, how-

[590] During the famous process against the Knights Templars in the reign of Edward II, the Archbishop of York, having taken the examination of certain templars in his province, felt some doubts which he propounded to several monasteries and divines. Most of these relate to the main subject. But one question, fitter indeed for lawyers than theologians, was, whereas many would not confess without torture, whether he might make use of this means, licet hoc in regno Angliæ nunquam visum fuerit vel auditum? Et si torquendi sunt, utrum per clericos vel laicos? Et dato, quòd nullus omnino tortor inveniri valeat in Angliâ, utrum pro tortoribus mittendum sit ad partes transmarinas? (Walt. Hemingford, p. 256.) Instances, however, of its use are said to have occurred in the fifteenth century. See a learned "Reading on the Use of Torture in the Criminal Law of England, by David Jardine, Esq., 1837."

[591] "Rot. Parl.," vol. iv, p. 65.

[592] Id., p. 202.

ever, by act of attainder, which can not well be styled illegal. Nor are they to be considered as severe. Mortimer had broken out of the Tower, where he was confined on a charge of treason. This was a capital felony at common law; and the chief irregularity seems to have consisted in having recourse to Parliament in order to attaint him of treason, when he had already forfeited his life by another crime.

I would not willingly attribute to the prevalence of Tory dispositions what may be explained otherwise, the progress which Mr. Hume's historical theory as to our constitution has been gradually making since its publication. The tide of opinion, which since the Revolution, and indeed since the reign of James I, had been flowing so strongly in favour of the antiquity of our liberties, now seems, among the higher and more literary classes, to set pretty decidedly the other way. Though we may still sometimes hear a demagogue chattering about the witenagemot, it is far more usual to find sensible and liberal men who look on Magna Charta itself as the result of an uninteresting squabble between the king and his barons. Acts of force and injustice, which strike the cursory inquirer, especially if he derives his knowledge from modern compilations, more than the average tenor of events, are selected and displayed as fair samples of the law and of its administration. We are deceived by the comparatively perfect state of our present liberties, and forget that our superior security is far less owing to positive law than to the control which is exercised over government by public opinion through the general use of printing, and to the diffusion of liberal principles in policy through the same means. Thus disgusted at a contrast which it was hardly candid to institute, we turn away from the records that attest the real though imperfect freedom of our ancestors, and are willing to be persuaded that the whole scheme of English polity, till the commons took on themselves to assert their natural rights against James I, was at best but a mockery of popular privileges, hardly recognised in theory, and never regarded in effect.[593]

This system, when stripped of those slavish inferences that Brady and Carte attempted to build upon it, admits perhaps of no essential objection but its want of historical truth. God forbid that our rights to just and free government should be tried by a jury of antiquaries! Yet it is a generous pride that intertwines the consciousness of hereditary freedom with the memory of our ancestors; and no trifling argument against those who seem indifferent in its cause, that the character of the bravest and most virtuous among nations has not depended upon the

[593] This was written in 1811 or 1812; and is among many passages which the progress of time has somewhat falsified.

accidents of race or climate, but been gradually wrought by the plastic influence of civil rights, transmitted as a prescriptive inheritance through a long course of generations.

By what means the English acquired and preserved this political liberty, which, even in the fifteenth century, was the admiration of judicious foreigners,[594] is a very rational and interesting inquiry. Their own serious and steady attachment to the laws must always be reckoned among the principal causes of this blessing. The civil equality of all freemen below the rank of peerage, and the subjection of peers themselves to the impartial arm of justice, and to a due share in contribution to public burdens, advantages unknown to other countries, tended to identify the interests and to assimilate the feelings of the aristocracy with those of the people; classes whose dissension and jealousy has been in many instances the surest hope of sovereigns aiming at arbitrary power. This freedom from the oppressive superiority of a privileged order was peculiar to England. In many kingdoms the royal prerogative was at least equally limited. The statutes of Aragon are more full of remedial provisions. The right of opposing a tyrannical government by arms was more frequently asserted in Castile. But nowhere else did the people possess by law, and I think, upon the whole, in effect, so much security for their personal freedom and property. Accordingly, the middling ranks flourished remarkably, not only in commercial towns, but among the cultivators of the soil. "There is scarce a small village," says Sir J. Fortescue, "in which you may not find a knight, an esquire, or some substantial householder (paterfamilias), commonly called a frankleyn,[595] possessed of considerable estate; besides others who are called freeholders, and many yeomen of estates sufficient to make a substantial jury." I would, however, point out more particularly two causes which had a very leading efficacy in the gradual development of our constitution: first, the schemes of continental ambition in which our government was long engaged; secondly, the manner in which feudal principles of insubordination and resistance were modified by the prerogatives of the early Norman kings.

1. At the epoch when William the Conqueror ascended the throne hardly any other power was possessed by the King of

[594] Philip de Comines, in particular, takes several opportunities of testifying his esteem for the English government. (See particularly l. iv, c. i, and l. v, c. xix.)

[595] By a frankleyn in this place we are to understand what we call a country squire, like the frankleyn of Chaucer; for the word esquire in Fortescue's time was only used in its limited sense, for the sons of peers and knights, or such as had obtained the title by creation or some other legal means.

The mention of Chaucer leads me to add that the prologue to his "Canterbury Tales" is of itself a continual testimony to the plenteous and comfortable situation of the middle ranks in England, as well as to that fearless independence and frequent originality of character among them, which liberty and competence have conspired to produce.

France than what he inherited from the great fiefs of the Capetian family. War with such a potentate was not exceedingly to be dreaded, and William, besides his immense revenue, could employ the feudal services of his vassals, which were extended by him to continental expeditions. These circumstances were not essentially changed till after the loss of Normandy; for the acquisitions of Henry II kept him fully on an equality with the French crown, and the dilapidation which had taken place in the royal demesnes was compensated by several arbitrary resources that filled the exchequer of these monarchs. But in the reigns of John and Henry III, the position of England, or rather of its sovereign, with respect to France, underwent a very disadvantageous change. The loss of Normandy severed the connection between the English nobility and the Continent; they had no longer estates to defend, and took not sufficient interest in the concerns of Guienne to fight for that province at their own cost. Their feudal service was now commuted for an escuage, which fell very short of the expenses incurred in a protracted campaign. Tallages of royal towns and demesne lands, extortion of money from the Jews, every feudal abuse and oppression, were tried in vain to replenish the treasury, which the defence of Eleanor's inheritance against the increased energy of France was constantly exhausting. Even in the most arbitrary reigns a general tax upon landholders, in any cases but those prescribed by the feudal law, had not been ventured; and the standing bulwark of Magna Charta, as well as the feebleness and unpopularity of Henry III, made it more dangerous to violate an established principle. Subsidies were therefore constantly required; but for these it was necessary for the king to meet Parliament to hear their complaints, and, if he could not elude, to acquiesce in their petitions. These necessities came still more urgently upon Edward I, whose ambitious spirit could not patiently endure the encroachments of Philip the Fair, a rival not less ambitious, but certainly less distinguished by personal prowess, than himself. What advantage the friends of liberty reaped from this ardour for continental warfare is strongly seen in the circumstances attending the Confirmation of the Charters.

But after this statute had rendered all tallages without consent of Parliament illegal, though it did not for some time prevent their being occasionally imposed, it was still more difficult to carry on a war with France or Scotland, to keep on foot naval armaments, or even to preserve the courtly magnificence which that age of chivalry affected, without perpetual recurrence to the House of Commons. Edward III very little consulted the interests of his prerogative when he stretched forth his hand to seize the phantom of a crown in France. It compelled him to

assemble Parliament almost annually, and often to hold more than one session within the year. Here the representatives of England learned the habit of remonstrance and conditional supply; and though, in the meridian of Edward's age and vigour, they often failed of immediate redress, yet they gradually swelled the statute roll with provisions to secure their country's freedom; and acquiring self-confidence by mutual intercourse, and sense of the public opinion, they became able, before the end of Edward's reign, and still more in that of his grandson, to control, prevent, and punish the abuses of administration. Of all these proud and sovereign privileges, the right of refusing supply was the keystone. But for the long wars in which our kings were involved, at first by their possession of Guienne, and afterward by their pretensions upon the crown of France, it would have been easy to suppress remonstrances by avoiding to assemble Parliament. For it must be confessed that an authority was given to the king's proclamations, and to ordinances of the council, which differed but little from legislative power, and would very soon have been interpreted by complaisant courts of justice to give them the full extent of statutes.

It is common, indeed, to assert that the liberties of England were bought with the blood of our forefathers. This is a very magnanimous boast, and in some degree is consonant enough to the truth. But it is far more generally accurate to say that they were purchased by money. A great proportion of our best laws, including Magna Charta itself, as it now stands confirmed by Henry III, were, in the most literal sense, obtained by a pecuniary bargain with the crown. In many Parliaments of Edward III and Richard II this sale of redress is chaffered for as distinctly, and with as little apparent sense of disgrace, as the most legitimate business between two merchants would be transacted. So little was there of voluntary benevolence in what the loyal courtesy of our constitution styles concessions from the throne, and so little title have these sovereigns, though we can not refuse our admiration to the generous virtues of Edward III and Henry V, to claim the gratitude of posterity as the benefactors of their people!

2. The relation established between a lord and his vassal by the feudal tenure, far from containing principles of any servile and implicit obedience, permitted the compact to be dissolved in case of its violation by either party. This extended as much to the sovereign as to inferior lords; the authority of the former in France, where the system most flourished, being for several ages rather feudal than political. If a vassal was aggrieved, and if justice was denied him, he sent a defiance—that is, a renunciation of fealty to the king—and was entitled to enforce redress

at the point of his sword. It then became a contest of strength as between two independent potentates, and was terminated by treaty, advantageous or otherwise, according to the fortune of war. This privilege, suited enough to the situation of France, the great peers of which did not originally intend to admit more than a nominal supremacy in the house of Capet, was evidently less compatible with the regular monarchy of England. The stern natures of William the Conqueror and his successors kept in control the mutinous spirit of their nobles, and reaped the profit of feudal tenures without submitting to their reciprocal obligations. They counteracted, if I may so say, the centrifugal force of that system by the application of a stronger power, by preserving order, administering justice, checking the growth of baronial influence and riches, with habitual activity, vigilance, and severity. Still, however, there remained the original principle, that allegiance depended conditionally upon good treatment, and that an appeal might be lawfully made to arms against an oppressive government. Nor was this, we may be sure, left for extreme necessity, or thought to require a long enduring forbearance. In modern times a king compelled by his subjects' swords to abandon any pretension would be supposed to have ceased to reign, and the expressed recognition of such a right as that of insurrection has been justly deemed inconsistent with the majesty of law. But ruder ages had ruder sentiments. Force was necessary to repel force; and men accustomed to see the king's authority defied by private riot were not much shocked when it was resisted in defence of public freedom.

The Great Charter of John was secured by the election of twenty-five barons as conservators of the compact. If the king, or the justiciary in his absence, should transgress any article, any four might demand reparation, and on denial carry their complaint to the rest of their body. "And those barons, with all the commons of the land, shall distrain and annoy us by every means in their power; that is, by seizing our castles, lands, and possessions, and every other mode, till the wrong shall be repaired to their satisfaction, saving our person and our queen and children. And when it shall be repaired they shall obey us as before." [596] It is amusing to see the common law of distress introduced upon this gigantic scale, and the capture of the king's castles treated as analogous to impounding a neighbour's horse for breaking fences.

A very curious illustration of this feudal principle is found in the conduct of William, Earl of Pembroke, one of the greatest names in our ancient history, toward Henry III. The king had defied him, which was tantamount to a declaration of war, alleg-

[596] Brady's "Hist.," vol. i; Appendix, p. 148.

ing that he had made an inroad upon the royal domains. Pembroke maintained that he was not the aggressor, that the king had denied him justice, and been the first to invade his territory; on which account he had thought himself absolved from his homage, and at liberty to use force against the malignity of the royal advisers. "Nor would it be for the king's honour," the earl adds, "that I should submit to his will against reason, whereby I should rather do wrong to him and to that justice which he is bound to administer toward his people; and I should give an ill example to all men in deserting justice and right in compliance with his mistaken will. For this would show that I loved my worldly wealth better than justice." These words, with whatever dignity expressed, it may be objected, prove only the disposition of an angry and revolted earl. But even Henry fully admitted the right of taking arms against himself if he had meditated his vassal's destruction, and disputed only the application of this maxim to the Earl of Pembroke.[597]

These feudal notions, which placed the moral obligation of allegiance very low, acting under a weighty pressure from the real strength of the crown, were favourable to constitutional liberty. The great vassals of France and Germany aimed at living independently on their fiefs, with no further concern for the rest than as useful allies having a common interest against the crown. But in England, as there was no prospect of throwing off subjection, the barons endeavoured only to lighten its burden, fixing limits to prerogative by law, and securing their observation by parliamentary remonstrances or by dint of arms. Hence, as all rebellions in England were directed only to coerce the government, or at the utmost to change the succession of the crown, without the smallest tendency to separation, they did not impair the national strength nor destroy the character of the constitution. In all these contentions it is remarkable that the people and clergy sided with the nobles against the throne. No individuals are so popular with the monkish annalists, who speak the language of the populace, as Simon, Earl of Leicester, Thomas, Earl of Lancaster, and Thomas, Duke of Gloucester, all turbulent opposers of the royal authority, and probably little deserving of their panegyrics. Very few English historians of the middle ages are advocates of prerogative. This may be ascribed both to the equality of our laws and to the interest which the aristocracy found in courting popular favour, when committed against so formidable an adversary as the king. And even now, when the stream that once was hurried along gullies and dashed down precipices hardly betrays upon its broad and tranquil bosom the motion that actuates it, it must still be accounted a singular happiness

[597] Matt. Paris, p. 330; Littleton's "Hist. of Henry II," vol. iv, p. 41.

of our constitution that, all ranks graduating harmoniously into one another, the interests of peers and commoners are radically interwoven; each in a certain sense distinguishable, but not balanced like opposite weights, not separated like discordant fluids, not to be secured by insolence or jealousy, but by mutual adherence and reciprocal influences.

From the time of Edward I the feudal system and all the feelings connected with it declined very rapidly. But what the nobility lost in the number of their military tenants was in some degree compensated by the state of manners. The higher class of them, who took the chief share in public affairs, were exceedingly opulent, and their mode of life gave wealth an incredibly greater efficacy than it possesses at present. Gentlemen of large estates and good families who had attached themselves to these great peers, who bore offices which we should call menial in their households, and sent their children thither for education, were of course ready to follow their banner in rising, without much inquiry into the cause. Still less would the vast body of tenants and their retainers, who were fed at the castle in time of peace, refuse to carry their pikes and staves into the field of battle. Many devices were used to preserve this aristocratic influence, which riches and ancestry of themselves rendered so formidable. Such was the maintenance of suits, or confederacies for the purpose of supporting each other's claims in litigation, which was the subject of frequent complaints in Parliament, and gave rise to several prohibitory statutes. By help of such confederacies parties were enabled to make violent entries upon the lands they claimed, which the law itself could hardly be said to discourage.[598] Even proceedings in courts of justice were often liable to intimidation and influence.[599] A practice much allied to confederacies of maintenance, though ostensibly more harmless, was that of giving liveries to all retainers of a noble family; but it had an obvious tendency to preserve that spirit of factious attachments and animosities which it is the general policy of a wise government to dissipate. From the first year of Richard II we

[598] If a man was disseized of his land, he might enter upon the disseizor and reinstate himself without course of law. In what case this right of entry was taken away, or tolled, as it was expressed, by the death or alienation of the disseizor, is a subject extensive enough to occupy two chapters of Littleton. What pertains to our inquiry is, that by an entry in the old law-books we must understand an actual repossession of the disseizee, not a suit in ejectment, as it is now interpreted, but which is a comparatively modern proceeding. The first remedy, says Britton, of the disseizee is to collect a body of his friends (recoiller amys et force), and without delay to cast out the disseizors, or at least to maintain himself in possession along with them (c. 44). This entry ought indeed, by 5 R. II, stat. i, c. 8, to be made peaceably; and the justices might assemble the posse comitatus to imprison persons entering on lands by violence (15 R. II, c. 2); but these laws imply the facts that made them necessary.

[599] No lord, or other person, by 20 R. II, c. 3, was permitted to sit on the bench with the justices of assize. Trials were sometimes overawed by armed parties, who endeavoured to prevent their adversaries from appearing. ("Paston Letters," vol. iii, p. 119.)

find continual mention of this custom, with many legal provisions against it, but it was never abolished till the reign of Henry VII.[600]

These associations under powerful chiefs were only incidentally beneficial, as they tended to withstand the abuses of prerogative. In their more usual course they were designed to thwart the legitimate exercise of the king's government in the administration of the laws. All Europe was a scene of intestine anarchy during the middle ages; and though England was far less exposed to the scourge of private war than most nations on the Continent, we should find, could we recover the local annals of every country, such an accumulation of petty rapine and tumult as would almost alienate us from the liberty which served to engender it. This was the common tenor of manners, sometimes so much aggravated as to find a place in general history,[601] more often attested by records during the three centuries that the house of Plantagenet sat on the throne. Disseizin, or forcible dispossession of freeholds, makes one of the most considerable articles in our law-books.[602] Highway robbery was from the earliest times a sort of national crime. Capital punish-

[600] From a passage in the "Paston Letters" (vol ii, p. 23) it appears that, far from these acts being regarded, it was considered as a mark of respect to the king, when he came into a county, for the noblemen and gentry to meet him with as many attendants in livery as they could muster. Sir John Paston was to provide twenty men in their livery-gowns, and the Duke of Norfolk two hundred. This illustrates the well-known story of Henry VII and the Earl of Oxford, and shows the mean and oppressive conduct of the king in that affair, which Hume has pretended to justify.

In the first of Edward IV it is said in the roll of Parliament (vol. v, p. 407), that, "by yeving of liveries and signets, contrary to the statutes and ordinances made aforetyme, maintenaunce of quarrels, extortions, robberies, murders been multiplied and continued within this reame, to the grete disturbaunce and inquietation of the same."

[601] Thus to select one passage out of many: Eodem anno (1332) quidam maligni, fulti quorundam magnatum præsidio, regis adolescentiam spernentes, et regnum perturbare intendentes, in tantam turbam creverunt, nemora et saltus occupaverunt, ita quod toti regno terrori essent. (Walsingham, p. 132.)

[602] I am aware that in many, probably a great majority of reported cases this word was technically used, where some unwarranted conveyance, such as a feoffment by the tenant for life, was held to have wrought a disseizin; or where the plaintiff was allowed, for the purpose of a more convenient remedy, to feign himself disseized, which was called disseizin by election. But several proofs might be brought from the parliamentary petitions, and I doubt not, if nearly looked at, from the Year-books, that in other cases there was an actual and violent expulsion. And the definition of disseizin in all the old writers, such as Britton and Littleton, is obviously framed upon its primary meaning of violent dispossession, which the word had probably acquired long before the more peaceable disseizins, if I may use the expression, became the subject of the remedy by assize.

I would speak with deference of Lord Mansfield's elaborate judgment in Taylor dem. Atkins v. Horde, 1 Burrow, 107, etc.; but some positions in it appear to me rather too strongly stated; and particularly that the acceptance of the disseizor as tenant by the lord was necessary to render the disseizin complete; a condition which I have not found hinted in any law-book. See Butler's note on "Co. Litt.," p. 330; where that eminent lawyer expresses similar doubts as to Lord Mansfield's reasoning. It may, however, be remarked, that constructive or elective disseizins, being of a technical nature, were more likely to produce cases in the Year-books than those accompanied with actual violence, which would commonly turn only on matters of fact, and be determined by a jury.

A remarkable instance of violent disseizin, amounting in effect to a private war, may be found in the "Paston Letters," occupying most of the fourth volume. One of the Paston family, claiming a right to Caistor Castle, kept possession against the Duke of Norfolk, who

ments, though very frequent, made little impression on a bold and a licentious crew, who had at least the sympathy of those who had nothing to lose on their side, and flattering prospects of impunity. We know how long the outlaws of Sherwood lived in tradition—men who, like some of their betters, have been permitted to redeem by a few acts of generosity the just ignominy of extensive crimes. These, indeed, were the heroes of vulgar applause; but when such a judge as Sir John Fortescue could exult that more Englishmen were hanged for robbery in one year than French in seven, and that, "if an Englishman be poor, and see another having riches which may be taken from him by might, he will not spare to do so," [603] it may be perceived how thoroughly these sentiments had pervaded the public mind.

Such robbers, I have said, had flattering prospects of impunity. Besides the general want of communication, which made one who had fled from his own neighbourhood tolerably secure, they had the advantage of extensive forests to facilitate their depredations and prevent detection. When outlawed or brought to trial, the worst offenders could frequently purchase charters of pardon, which defeated justice in the moment of her blow.[604] Nor were the nobility ashamed to patronize men guilty of every crime. Several proofs of this occur in the rolls. Thus, for example, in the twenty-second of Edward III, the commons pray that, "whereas it is notorious how robbers and malefactors infest the country, the king would charge the great men of the land that none such be maintained by them, privily or openly, but that they lend assistance to arrest and take such ill-doers." [605]

brought a large force, and laid a regular siege to the place, till it surrendered for want of provisions. Two of the besiegers were killed. It does not appear that any legal measures were taken to prevent or punish this outrage.

[603] "Difference between an Absolute and Limited Monarchy," p. 99.

[604] The manner in which these were obtained, in spite of law, may be noticed among the violent courses of prerogative. By statute 2 E. III, c. 2, confirmed by 10 E. III, c. 2, the king's power of granting pardons was taken away, except in cases of homicide per infortunium. Another act, 14 E. III, c. 15, reciting that the former laws in this respect have not been kept, declares that all pardons contrary to them shall be holden as null. This, however, was disregarded like the rest and the commons began tacitly to recede from them, and endeavoured to compromise the question with the crown. By 27 E. III, stat. 1, c. 2, without adverting to the existing provisions, which may therefore seem to be repealed by implication, it is enacted that in every charter of pardon, granted at any one's suggestion, the suggestor's name and the grounds of his suggestion shall be expressed, that if the same be found untrue it may be disallowed. And in 13 R. II, stat. 2, c. 1, we are surprised to find the commons requesting that pardons might not be granted, as if the subject were wholly unknown to the law; the king protesting in reply that he will save his liberty and regality, as his progenitors had done before, but conceding some regulations, far less remedial than what were provided already by the 27th of Edward II. Pardons make a pretty large head in Brooke's "Abridgment," and were undoubtedly granted without scruple by every one of our kings. A pardon obtained in a case of peculiar atrocity is the subject of a specific remonstrance in 23 H. VI. ("Rot Parl.," vol. v, p. 111.)

[605] "Rot. Parl.," vol. ii, p. 201. A strange policy, for which no rational cause can be alleged, kept Wales and even Cheshire distinct from the rest of the kingdom. Nothing could be more injurious to the adjacent counties. Upon the credit of their immunity from the jurisdiction of the king's courts, the people of Cheshire broke with armed bands into the neighbouring counties, and perpetrated all the crimes in their power. ("Rot. Parl.," vol. iii, pp. 81, 201, 440: Stat. 1 H. IV, c. 18.) As to the Welsh frontier, it was constantly almost

It is perhaps the most meritorious part of Edward I's government that he bent all his power to restrain these breaches of tranquility. One of his salutary provisions is still in constant use, the statute of coroners. Another, more extensive, and, though partly obsolete, the foundation of modern laws, is the statute of Winton, which, reciting that "from day to day robberies, murders, burnings, and theft be more often used than they have been heretofore, and felons can not be attainted by the oath of jurors which had rather suffer robberies on strangers to pass without punishment than indite the offenders, of whom great part be people of the same country, or at least, if the offenders be of another country, the receivers be of places near," enacts that hue and cry shall be made upon the commission of a robbery, and that the hundred shall remain answerable for the damage unless the felons be brought to justice. It may be inferred from this provision that the ancient law of frank-pledge, though retained longer in form, had lost its efficiency. By the same act, no stranger or suspicious person was to lodge even in the suburbs of towns; the gates were to be kept locked from sunset to sunrising; every host to be answerable for his guest; the highways to be cleared of trees and underwood for two hundred feet on each side; and every man to keep arms according to his substance in readiness to follow the sheriff on hue and cry raised after felons.[606] The last provision indicates that the robbers plundered the country in formidable bands. One of these, in a subsequent part of Edward's reign, burned the town of Boston during a fair, and obtained a vast booty, though their leader had the ill fortune not to escape the gallows.

The preservation of order throughout the country was originally intrusted not only to the sheriff, coroner, and constables, but to certain magistrates called conservators of the peace. These, in conformity to the democratic character of our Saxon government, were elected by the freeholders in their county court.[607]

in a state of war, which a very little good sense and benevolence in any one of our shepherds would have easily prevented, by admitting the conquered people to partake in equal privileges with their fellow-subjects. Instead of this, they satisfied themselves with aggravating the mischief by granting legal reprisals upon Welshmen. (Stat. 2 H. IV, c. 16.) Welshmen were absolutely excluded from bearing offices in Wales. The English living in the English towns of Wales earnestly petition (23 H. VI, "Rot. Parl.," vol. v, pp. 104, 154) that this exclusion may be kept in force. Complaints of the disorderly state of the Welsh frontier are repeated as late as 12 E. IV, vol. vi, p. 8.

It is curious that, so early as 15 E. II, a writ was addressed to the Earl of Arundel, justiciary of Wales, directing him to cause twenty-four discreet persons to be chosen from the north, and as many from the south of that principality, to serve in Parliament. ("Rot. Parl.," vol. i, p. 456.) And we find a similar writ in the 20th of the same king. (Prynne's "Register," 4th part, p. 60.) Willis says that he has seen a return to one of these precepts, much obliterated, but from which it appears that Conway, Beaumaris, and Carnarvon returned members. ("Notitia Parliamentaria," vol. i, preface, p. 15.)

[606] The statute of Winton was confirmed, and proclaimed afresh by the sheriffs, 7 R. II, c. 6, after an era of great disorder.

[607] Blackstone, vol. i, c 9; Carte, vol. ii, p. 203.

But Edward I issued commissions to carry into effect the statute of Winton; and from the beginning of Edward III's reign the appointment of conservators was vested in the crown, their authority gradually enlarged by a series of statutes, and their titles changed to that of justices. They were empowered to imprison and punish all rioters and other offenders, and such as they should find by indictment or suspicion to be reputed thieves or vagabonds, and to take sureties for good behaviour from persons of evil fame.[608] Such a jurisdiction was hardly more arbitrary than, in a free and civilized age, it has been thought fit to vest in magistrates; but it was ill endured by a people who placed their notions of liberty in personal exemption from restraint rather than any political theory. An act having been passed (2 Richard II, 2, c. 6), in consequence of unusual riots and outrages, enabling magistrates to commit the ringleaders of tumultuary assemblies without waiting for legal process till the next arrival of justices of jail delivery, the commons petitioned next year against this "horrible grievous ordinance," by which "every freeman in the kingdom would be in bondage to these justices," contrary to the Great Charter, and to many statutes, which forbid any man to be taken without due course of law.[609] So sensitive was their jealousy of arbitrary imprisonment that they preferred enduring riot and robbery to chastising them by any means that might afford a precedent to oppression, or weaken men's reverence for Magna Charta.

There are two subjects remaining to which this retrospect of the state of manners naturally leads us, and which I would not pass unnoticed, though not perhaps absolutely essential to a constitutional history; because they tend in a very material degree to illustrate the progress of society, with which civil liberty and regular government are closely connected. These are, first, the servitude or villenage of the peasantry, and their gradual emancipation from that condition; and, secondly, the continual increase of commercial intercourse with foreign countries. But as the latter topic will fall more conveniently into the next part of this work, I shall postpone its consideration for the present.

In a former passage I have remarked of the Anglo-Saxon ceorls that neither their situation nor that of their descendants for the earlier reigns after the conquest appears to have been mere servitude. But from the time of Henry II, as we learn

[608] 1 E. III, stat. 2, c. 16; 4 E. III, c. 2; 34 E. III, c. 1; 7 R. II, c. 5. The institution excited a good deal of ill-will, even before these strong acts were passed. Many petitions of the commons in the 28th E. III, and other years, complain of it. ("Rot. Parl.," vol. ii.)

[609] "Rot. Parl.," vol. iii, p. 65. It may be observed that this act (2 E. II, c. 16) was not founded on a petition, but on the king's answer; so that the commons were not real parties to it, and accordingly call it an ordinance in their present petition. This naturally increased their animosity in treating it as an infringement of the subject's right.

from Glanvil, the villein, so called, was absolutely dependent upon his lord's will, compelled to unlimited services, and destitute of property, not only in the land he held for his maintenance, but in his own acquisitions.[610] If a villein purchased or inherited land, the lord might seize it; if he accumulated stock, its possession was equally precarious. Against his lord he had no right of action; because his indemnity in damages, if he could have recovered any, might have been immediately taken away. If he fled from his lord's service, or from the land which he held, a writ issued de nativitate probandâ, and the master recovered his fugitive by law. His children were born to the same state of servitude; and, contrary to the rule of the civil law, where one parent was free and the other in villenage, the offspring followed their father's condition.[611]

This was certainly a severe lot; yet there are circumstances which materially distinguish it from slavery. The condition of villenage, at least in later times, was perfectly relative; it formed no distinct order in the political economy. No man was a villein in the eye of law, unless his master claimed him; to all others he was a freeman, and might acquire, dispose of, or sue for property without impediment. Hence Sir E. Coke argues that villeins are included in the twenty-ninth article of Magna Charta, "No freeman shall be disseized nor imprisoned."[612] For murder, rape, or mutilation of his villein, the lord was indictable at the king's suit, though not for assault or imprisonment, which were within the sphere of his seignorial authority.[613]

This class was distinguished into villeins regardant, who had

[610] Glanvil, l. v, c. 5.

[611] According to Bracton, the bastard of a nief, or female villein, was born in servitude; and where the parents lived on a villein tenement, the children of a nief, even though married to a freeman, were villeins (l. iv, c. 21; and see Beame's translation of Glanvil, p. 109). But Littleton lays down an opposite doctrine, that a bastard was necessarily free; because, being the child of no father in the contemplation of law, he could not be presumed to inherit servitude from any one; and makes no distinction as to the parent's residence. (Sect. 1888.) I merely take notice of this change in the law between the reigns of Henry III and Edward IV as an instance of the bias which the judges showed in favour of personal freedom. Another, if we can rely upon it, is more important. In the reign of Henry II a freeman marrying a nief, and settling on a villein tenement, lost the privileges of freedom during the time of his occupation; legem terræ quasi nativus amittit. (Glanvil, l. v, c. 6.) This was consonant to the customs of some other countries, some of which went further, and treated such a person forever as a villein. But, on the contrary, we find in Britton, a century later, that the nief herself by such a marriage became free during the coverture (c. 31). [Note XIII.]

[612] I must confess that I have some doubts how far this was law at the epoch of Magna Charta. Glanvil and Bracton both speak of the status villenagii as opposed to that of liberty, and seem to consider it as a civil condition, not a merely personal relation. The civil law and the French treatise of Beaumanoir hold the same language. And Sir Robert Cotton maintains without hesitation that villeins are not within the 29th section of Magna Charta, "being excluded by the word liber." (Cotton's "Posthuma," p. 223.) Britton, however, a little after Bracton, says that in an action the villein is answerable to all men, and all men to him (p. 79). And later judges, in favorem libertatis, gave this construction to the villein's situation, which must therefore be considered as the clear law of England in the fourteenth and fifteenth centuries.

[613] Littleton, sect. 189, 190, speaks only of an appeal in the two former cases; but an indictment is a fortiori; and he says, sect. 194, that an indictment, though not an appeal, lies against the lord for maiming his villein.

been attached from time immemorial to a certain manor, and villeins in gross, where such territorial prescription had never existed or had been broken. In the condition of these, whatever has been said by some writers, I can find no manner of difference; the distinction was merely technical, and affected only the mode of pleading.[614] The term in gross is appropriated in our legal language to property held absolutely and without reference to any other. Thus it is applied to rights of advowson or of common, when possessed simply and not as incident to any particular lands. And there can be no doubt that it was used in the same sense for the possession of a villein.[615] But there was a class of persons, sometimes inaccurately, confounded with villeins, whom it is more important to separate. Villenage had a double sense, as it related to persons or to lands. As all men were free or villeins, so all lands were held by a free or villein tenure. As a villein might be enfeoffed of freeholds, though they lay at the mercy of his lord, so a freeman might hold tenements in villenage. In this case his personal liberty subsisted along with the burdens of territorial servitude. He was bound to arbitrary service at the will of the lord, and he might by the same will be at any moment dispossessed, for such was the condition of his tenure. But his chattels were secure from seizure, his person from injury, and he might leave the land whenever he pleased.[616]

From so disadvantageous a condition as this of villenage it may cause some surprise that the peasantry of England should have ever emerged. The law incapacitating a villein from acquiring property placed, one would imagine, an insurmountable barrier in the way of his enfranchisement. It followed from thence, and is positively said by Glanvil, that a villein could not buy his freedom, because the price he tendered would already belong to his lord.[617] And even in the case of free tenants in villenage it

[614] Gurdon on "Courts Baron," p. 592, supposes the villein in gross to have been the Lazzus or Servus of early times, a domestic serf, and of an inferior species to the cultivator, or villein regardant. Unluckily, Bracton and Littleton do not confirm this notion, which would be convenient enough; for in "Doomsday Book" there is a marked distinction between the Servi and Villani. Blackstone expresses himself inaccurately when he says the villein in gross was annexed to the person of the lord, and transferable by deed from one owner to another. By this means indeed a villein regardant would become a villein in gross, but all villeins were alike liable to be sold by their owners. (Littleton, sect. 181; Blomefield's "Norfolk," vol. iii, p. 860.) Mr. Hargrave supposes that villeins in gross were never numerous (Case of Somerset, Howell's "State Trials," vol. xx, p. 42); drawing this inference from the few cases relative to them that occur in the Year-books. And certainly the form of a writ de nativitate probandâ, and the peculiar evidence it required, which may be found in Fitzherbert's "Natura Brevium," or in Mr. H.'s argument, are only applicable to the other species. It is a doubtful point whether a freeman could, in contemplation of law, become a villein in gross; though his confession in a court of record, upon a suit already commenced (for this was requisite), would estop him from claiming his liberty; and hence Bracton speaks of this proceeding as a mode by which a freeman might fall into servitude.

[615] [Note XIV.]

[616] Bracton, l. ii, c. 8; l. iv, c. 28; Littleton, sect. 172.

[617] Glanvil, l. iv, c. 5.

is not easy to comprehend how their uncertain and unbounded services could ever pass into slight pecuniary commutations; much less how they could come to maintain themselves in their lands and mock the lord with a nominal tenure, according to the custom of the manor.

This, like many others relating to the progress of society, is a very obscure inquiry. We can trace the pedigree of princes, fill up the catalogue of towns besieged and provinces desolated, describe even the whole pageantry of coronations and festivals, but we can not recover the genuine history of mankind. It has passed away with slight and partial notice by contemporary writers; and our most patient industry can hardly at present put together enough of the fragments to suggest a tolerably clear representation of ancient manners and social life. I can not profess to undertake what would require a command of books as well as leisure beyond my reach; but the following observations may tend a little to illustrate our immediate subject, the gradual extinction of villenage.

If we take what may be considered as the simplest case, that of a manor divided into demesne lands of the lord's occupation and those in the tenure of his villeins, performing all the services of agriculture for him, it is obvious that his interest was to maintain just so many of these as his estate required for its cultivation. Land, the cheapest of articles, was the price of their labour; and though the law did not compel him to pay this or any other price, yet necessity, repairing in some degree the law's injustice, made those pretty secure of food and dwellings who were to give the strength of their arms for his advantage. But in course of time, as alienations of small parcels of manors to free tenants came to prevail, the proprietors of land were placed in a new situation relatively to its cultivators. The tenements in villenage, whether by law or usage, were never separated from the lordship, while its domain was reduced to a smaller extent through subinfeudations, sales, or demises for valuable rent. The purchasers under these alienations had occasion for labourers; and these would be free servants in respect of such employers, though in villenage to their original lord. As he demanded less of their labour, through the diminution of his domain, they had more to spare for other masters, and, retaining the character of villeins and the lands they held by that tenure, became hired labourers in husbandry for the greater part of the year. It is true that all their earnings were at the lord's disposal, and that he might have made a profit of their labour when he ceased to require it for his own land. But this, which the rapacity of more commercial times would have instantly suggested, might escape a feudal superior, who, wealthy beyond his wants, and guarded by the haughti-

ness of ancestry against the desire of such pitiful gains, was better pleased to win the affection of his dependants than to improve his fortune at their expense.

The services of villenage were gradually rendered less onerous and uncertain. Those of husbandry, indeed, are naturally uniform, and might be anticipated with no small exactness. Lords of generous tempers granted indulgences which were either intended to be or readily became perpetual. And thus, in the time of Edward I, we find the tenants in some manors bound only to stated services, as recorded in the lord's book.[618] Some of these, perhaps, might be villeins by blood; but free tenants in villenage were still more likely to obtain this precision in their services; and from claiming a customary right to be entered in the court roll upon the same terms as their predecessors, prevailed at length to get copies of it for their security.[619] Proofs of this remarkable transformation from tenants in villenage to copyholders are found in the reign of Henry III. I do not know, however, that they were protected, at so early an epoch, in the possession of their estates. But it is said in the "Year-book" of the forty-second of Edward III to be "admitted for clear law that, if the customary tenant or copyholder does not perform his services, the lord may seize his land as forfeited."[620] It seems implied herein that, so long as the copyholder did continue to perform the regular stipulations of his tenure, the lord was not at liberty to divest him of his estate; and this is said to be confirmed by a passage in Britton, which has escaped my search, though Littleton intimates that copyholders could have no remedy against their lord.[621] However, in the reign of Edward IV this was put out of doubt by the judges, who permitted the copyholder to bring his action of trespass against the lord for dispossession.

While some of the more fortunate villeins crept up into prop-

[618] Dugdale's "Warwickshire," apud Eden's "State of the Poor," vol. i, p. 13. A passage in another local history rather seems to indicate that some kind of delinquency was usually alleged, and some ceremony employed, before the lord entered on the villein's land. In Gissing manor, 39 E. III, the jury present, that W. G., a villein by blood, was a rebel and ungrateful toward his lord, for which all his tenements were seized. His offence was the having said that the lord kept four stolen sheep in his field. (Blomefield's "Norfolk," vol. i, p. 114.)

[619] Gurdon on "Courts Baron," p. 574.

[620] Brooke's "Abridgm." Tenant par copie, 1. By the extent roll of the manor of Brisingham in Norfolk, in 1254, it appears that there were then ninety-four copyholders and six cottagers in villenage, the former performing many but determinate services of labour for the lord. (Blomefield's "Norfolk," vol. i, p. 34.)

[621] Littl., sect. 77. A copyholder without legal remedy may seem little better than a tenant in mere villenage, except in name. But though, from the relation between the lord and copyholder, the latter might not be permitted to sue his superior, yet it does not follow that he might not bring his action against any person acting under the lord's direction, in which the defendant could not set up an illegal authority; just as, although no writ runs against the king, his ministers or officers are not justified in acting under his command contrary to law. I wish this note to be considered as correcting one in the first volume (p. 122), where I have said that a similar law in France rendered the distinction between a serf and a homme de poote little more than theoretical.

erty as well as freedom under the name of copyholders, the greater part enfranchised themselves in a different manner. The law, which treated them so harshly, did not take away the means of escape; nor was this a matter of difficulty in such a country as England. To this, indeed, the unequal progression of agriculture and population in different counties would have naturally contributed. Men emigrated, as they always must, in search of cheapness or employment, according to the tide of human necessities. But the villein, who had no additional motive to urge his steps away from his native place, might well hope to be forgotten or undiscovered when he breathed a freer air, and engaged his voluntary labour to a distant master. The lord had, indeed, an action against him; but there was so little communication between remote parts of the country that it might be deemed his fault or singular ill fortune if he were compelled to defend himself. Even in that case the law inclined to favour him; and so many obstacles were thrown in the way of these suits to reclaim fugitive villeins that they could not have operated materially to retard their general enfranchisement.[622] In one case, indeed, that of unmolested residence for a year and a day within a walled city or borough, the villein became free, and the lord was absolutely barred of his remedy. This provision is contained even in the laws of William the Conqueror, as contained in Hoveden, and, if it be not an interpolation, may be supposed to have had a view to strengthen the population of those places which were designed for garrisons. This law, whether of William or not, is unequivocally mentioned by Glanvil.[623] Nor was it a mere letter. According to a record in the sixth of Edward II, Sir John Clavering sued eighteen villeins of his manor of Cossey for withdrawing themselves therefrom with their chattels; whereupon a writ was directed to them; but six of the number claimed to be freemen, alleging the Conqueror's charter, and offering to prove that they had lived in Norwich, paying scot and lot, about thirty years, which claim was admitted.[624]

By such means a large proportion of the peasantry before the middle of the fourteenth century had become hired labourers instead of villeins. We first hear of them on a grand scale in an ordinance made by Edward III in the twenty-third year of his reign. This was just after the dreadful pestilence of 1348, and it recites that, the number of workmen and servants having been greatly reduced by that calamity, the remainder demanded excessive wages from their employers. Such an enhancement in

[622] See the rules of pleading and evidence in questions of villenage fully stated in Mr. Hargrave's argument in the case of Somerset. (Howell's "State Trials," vol. xxx, p. 38.)

[623] L. v, c. v.

[624] Blomefield's "Norfolk," vol. i, p. 657. I know not how far this privilege was supposed to be impaired by the statute 34 E. III, c. 11; which, however, might, I should conceive, very well stand along with it.

the price of labour, though founded exactly on the same principles as regulate the value of any other commodity, is too frequently treated as a sort of crime by lawgivers, who seem to grudge the poor that transient melioration of their lot which the progress of poulation or other analogous circumstances will, without any interference, very rapidly take away. This ordinance, therefore, enacts that every man in England, of whatever condition, bond or free, of able body, and within sixty years of age, not living of his own, nor by any trade, shall be obliged, when required, to serve any master who is willing to hire him at such wages as were usually paid three years since or for some time preceding; provided that the lords of villeins or tenants in villenage shall have the preference of their labour, so that they retain no more than shall be necessary for them. More than these old wages is strictly forbidden to be offered, as well as demanded. No one is permitted, under colour of charity, to give alms to a beggar. And, to make some compensation to the inferior classes for these severities, a clause is inserted, as wise, just, and practicable as the rest, for the sale of provisions at reasonable prices.[625]

This ordinance met with so little regard that a statute was made in Parliament two years after, fixing the wages of all artificers and husbandmen, with regard to the nature and season of their labour. From this time it became a frequent complaint of the commons that the statute of labourers was not kept. The king had in this case, probably, no other reason for leaving their grievance unredressed than his inability to change the order of Providence. A silent alteration had been wrought in the condition and character of the lower classes during the reign of Edward III. This was the effect of increased knowledge and refinement, which had been making a considerable progress for full half a century, though they did not readily permeate the cold region of poverty and ignorance. It was natural that the country people, or uplandish folk, as they were called, should repine at the exclusion from that enjoyment of competence, and security for the fruits of their labour, which the inhabitants of towns so fully possessed. The fourteenth century was, in many parts of Europe, the age when a sense of political servitude was most keenly felt. Thus the insurrection of the Jacquerie in France about the year 1358 had the same character, and resulted in a great measure from the same causes, as that of the English peasants in 1382. And we may account in a similar manner for the democratical tone of the French and Flemish cities, and for the prevalence of a spirit of liberty in Germany and Switzerland.[626]

I do not know whether we should attribute part of this revolu-

[625] Stat. 23 E. III. [626] [Note XV.]

tionary concussion to the preaching of Wicliffe's disciples, or look upon both one and the other as phenomena belonging to that particular epoch in the progress of society. New principles, both as to civil rule and religion, broke suddenly upon the uneducated mind, to render it bold, presumptuous, and turbulent. But at least I make little doubt that the dislike of ecclesiastical power, which spread so rapidly among the people at this season, connected itself with a spirit of insubordination and an intolerance of political subjection. Both were nourished by the same teachers, the lower secular clergy; and, however distinct we may think a religious reformation from a civil anarchy, there was a good deal common in the language by which the populace were inflamed to either one or the other. Even the Scriptural moralities which were then exhibited, and which became the foundation of our theatre, afforded fuel to the spirit of sedition. The common original and common destination of mankind, with every other lesson of equality which religion supplies to humble or to console, were displayed with coarse and glaring features in these representations. The familiarity of such ideas has deadened their effects upon our mind; but when a rude peasant, surprisingly destitute of religious instruction during that corrupt age of the Church, was led at once to these impressive truths, we can not be astonished at the intoxication of mind they produced.[627]

Though I believe that, compared at least with the aristocracy of other countries, the English lords were guilty of very little cruelty or injustice, yet there were circumstances belonging to that period which might tempt them to deal more hardly than before with their peasantry. The fourteenth century was an age of greater magnificence than those which had preceded, in dress, in ceremonies, in buildings; foreign luxuries were known enough to excite an eager demand among the higher ranks, and yet so scarce as to yield inordinate prices; while the landholders were, on the other hand, impoverished by heavy and unceasing taxation. Hence it is probable that avarice, as commonly happens, had given birth to oppression; and if the gentry, as I am inclined to believe, had become more attentive to agricultural improvements, it is reasonable to conjecture that those whose tenure obliged them to unlimited services of husbandry were more har-

[627] I have been more influenced by natural probabilities than testimony in ascribing this effect to Wicliffe's innovations, because the historians are prejudiced witnesses against him. Several of them depose to the connection between his opinions and the rebellion of 1382; especially Walsingham, p. 288. This implies no reflection upon Wicliffe, any more than the crimes of the anabaptists in Munster do upon Luther. Every one knows the distich of John Ball, which comprehends the essence of religious democracy:

"When Adam delved and Eve span,
Where was then the gentleman?"

The sermon of this priest, as related by Walsingham, p. 275, derives its argument for equality from the common origin of the species. He is said to have been a disciple of Wicliffe. (Turner's "Hist. of England," vol. ii, p. 420.)

assed than under their wealthy and indolent masters in preceding times.

The storm that almost swept away all bulwarks of civilized and regular society seems to have been long in collecting itself. Perhaps a more sagacious legislature might have contrived to disperse it: but the commons only presented complaints of the refractoriness with which villeins and tenants in villenage rendered their due services;[628] and the exigencies of government led to the fatal poll-tax of a groat, which was the proximate cause of the insurrection. By the demands of these rioters we perceive that territorial servitude was far from extinct; but it should not be hastily concluded that they were all personal villeins, for a large proportion were Kentish-men, to whom that condition could not have applied, it being a good bar to a writ de nativitate probandâ that the party's father was born in the county of Kent.[629]

After this tremendous rebellion it might be expected that the legislature would use little indulgence toward the lower commons. Such unhappy tumults are doubly mischievous, not more from the immediate calamities that attend them than from the fear and hatred of the people which they generate in the elevated classes. The general charter of manumission extorted from the king by the rioters of Blackheath was annulled by proclamation to the sheriffs,[630] and this revocation approved by the lords and commons in Parliament; who added, as was very true, that such enfranchisement could not be made without their consent, "which they would never give to save themselves from perishing all together in one day."[631] Riots were turned into treason by a law of the same Parliament.[632] By a very harsh statute in the twelfth of Richard II no servant or labourer could depart, even at the expiration of his service, from the hundred in which he lived without permission under the king's seal; nor might any who had been bred to husbandry till twelve years old exercise any other calling.[633] A few years afterward the commons petitioned that villeins might not put their children to school in order to advance them by the Church, "and this for the honour of all the freemen of the kingdom." In the same Parliament they complained that villeins fly to cities and boroughs, whence their masters can not recover them, and, if they attempt it, are hindered

[628] Stat. 1 R. II, c. 6; "Rot. Parl.," vol. iii, p. 21.

[629] 30 E. I, in Fitzherbert. Villenage, apud Lambard's "Perambulation of Kent," p. 632. Somner on Gavelkind, p. 72.

[630] Rymer, tome vii, p. 316, etc. The king holds this bitter language to the villeins of Essex, after the death of Tyler and execution of the other leaders had disconcerted them: Rustici quidem fuistis et estis, in bondagio permanebitis, non ut hactenus, sed incomparabiliter viliori, etc. (Walsingham, p. 269.)

[631] "Rot. Parl.," vol. iii, p. 100.

[632] R. II, c. 7. The words are, riot et rumour n'autres semblables; rather a general way of creating a new treason; but panic puts an end to jealousy.

[633] 12 R. II, c. 3.

by the people; and prayed that the lords might seize their villeins in such places without regard to the franchises thereof. But on both these petitions the king put in a negative.[634]

From henceforward we find little notice taken of villenage in parliamentary records, and there seems to have been a rapid tendency to its entire abolition. But the fifteenth century is barren of materials; and we can only infer that, as the same causes which in Edward III's time had converted a large portion of the peasantry into free labourers still continued to operate, they must silently have extinguished the whole system of personal and territorial servitude. The latter, indeed, was essentially changed by the establishment of the law of copyhold.

I can not presume to conjecture in what degree voluntary manumission is to be reckoned among the means that contributed to the abolition of villenage. Charters of enfranchisement were very common upon the Continent. They may perhaps have been less so in England. Indeed, the statute de donis must have operated very injuriously to prevent the enfranchisement of villeins regardant, who were entailed along with the land. Instances, however, occur from time to time, and we can not expect to discover many. One appears as early as the fifteenth year of Henry III, who grants to all persons born or to be born within his village of Contishall that they shall be free from all villenage in body and blood, paying an aid of twenty shillings to knight the king's eldest son, and six shillings a year as a quit rent.[635] So in the twelfth of Edward III certain of the king's villeins are enfranchised on payment of a fine.[636] In strictness of law, a fine from the villein for the sake of enfranchisement was nugatory, since all he could possess was already at his lord's disposal. But custom and equity might easily introduce different maxims; and it was plainly for the lord's interest to encourage his tenants in the acquisition of money to redeem themselves, rather than to quench the exertions of their industry by availing himself of an extreme right. Deeds of enfranchisement occur in the reigns of Mary and Elizabeth;[637] and perhaps a commission of the latter princess in 1574, directing the enfranchisement of her bondmen and bondwomen on certain manors

[634] "Rot. Parl.," 15 R. II, vol. ii, pp. 294, 296. The statute 7 H. IV, c. 17, enacts that no one shall put his son or daughter apprentice to any trade in a borough unless he have land or rent to the value of twenty shillings a year, but that any one may put his children to school. The reason assigned is the scarcity of labourers in husbandry, in consequence of people living in Upland apprenticing their children.

[635] Blomefield's "Norfolk," vol. iii, p. 571.

[636] Rymer, tome v, p. 44.

[637] Gurdon on "Courts Baron," p. 596; Madox, "Formulare Anglicanum," p. 420; Barrington on "Ancient Statutes," p. 278. It is said in a modern book that villenage was very rare in Scotland, and even that no instance exists in records of an estate sold with the labourers and their families attached to the soil. (Pinkerton's "Hist. of Scotland," vol. i, p. 147.) But Mr. Chalmers, in his "Caledonia," has brought several proofs that this assertion is too general.

upon payment of a fine, is the last unequivocal testimony to the existence of villenage,[638] though it is highly probable that it existed in remote parts of the country some time longer.[639]

From this general view of the English constitution, as it stood about the time of Henry VI, we must turn our eyes to the political revolutions which clouded the latter years of his reign. The minority of this prince, notwithstanding the vices and dissensions of his court and the inglorious discomfiture of our arms in France, was not perhaps a calamitous period. The country grew more wealthy; the law was, on the whole, better observed; the power of Parliament more complete and effectual than in preceding times. But Henry's weakness of understanding, becoming evident as he reached manhood, rendered his reign a perpetual minority. His marriage with a princess of strong mind, but ambitious and vindictive, rather tended to weaken the government and to accelerate his downfall; a certain reverence that had been paid to the gentleness of the king's disposition being overcome by her unpopularity. By degrees Henry's natural feebleness degenerated almost into fatuity; and this unhappy condition seems to have overtaken him nearly about the time when it became an arduous task to withstand the assault in preparation against his government. This may properly introduce a great constitutional subject, to which some peculiar circumstances of our own age have imperiously directed the consideration of Parliament. Though the proceedings of 1788 and 1810 are undoubtedly precedents of far more authority than any that can be derived from our ancient history, yet, as the seal of the legislature has not yet been set upon this controversy, it is not perhaps altogether beyond the possibility of future discussion; and at least it can not be uninteresting to look back on those parallel or analogous cases by which the deliberations of Parliament upon the question of regency were guided.

While the Kings of England retained their continental dominions, and were engaged in the wars to which those gave birth, they were, of course, frequently absent from this country. Upon such occasions the administration seems at first to have devolved officially on the justiciary, as chief servant of the crown. But Henry III began the practice of appointing lieutenants, or guardians of the realm (custodes regni), as they were more usually termed, by way of temporary substitutes. They were usually

[638] Barrington, ubi supra, from Rymer.

[639] There are several later cases reported wherein villenage was pleaded, and one of them as late as the fifteenth of James I. (Noy, p. 27; see Hargrave's argument, "State Trials," vol. xx, p. 41.) But these are so briefly stated, that it is difficult in general to understand them. It is obvious, however, that judgment was in no case given in favour of the plea; so that we can infer nothing as to the actual continuance of villenage.

It is remarkable, and may be deemed by some persons a proof of legal pedantry, that Sir E. Coke, while he dilates on the law of villenage, never intimates that it was become antiquated.

nominated by the king without consent of Parliament, and their office carried with it the right of exercising all the prerogatives of the crown. It was, of course, determined by the king's return; and a distinct statute was necessary in the reign of Henry V to provide that a Parliament called by the guardian of the realm during the king's absence should not be dissolved by that event.[640] The most remarkable circumstance attending those lieutenancies was that they were sometimes conferred on the heir apparent during his infancy. The Black Prince, then Duke of Cornwall, was left guardian of the realm in 1339, when he was but ten years old;[641] and Richard, his son, when still younger, in 1372, during Edward III's last expedition into France.[642]

These do not, however, bear a very close analogy to regencies in the stricter sense, or substitutions during the natural incapacity of the sovereign. Of such there had been several instances before it became necessary to supply the deficiency arising from Henry's derangement. 1. At the death of John, William, Earl of Pembroke, assumed the title of rector regis et regni, with the consent of the loyal barons who had just proclaimed the young king, and probably conducted the government in a great measure by their advice.[643] But the circumstances were too critical, and the time is too remote, to give this precedent any material weight. 2. Edward I being in Sicily at his father's death, the nobility met at the Temple Church, as we are informed by a contemporary writer, and, after making a new great seal, appointed the Archbishop of York, Edward, Earl of Cornwall, and the Earl of Gloucester to be ministers and guardians of the realm, who accordingly conducted the administration in the king's name until his return.[644] It is here observable that the Earl of Cornwall, though nearest prince of the blood, was not supposed to enjoy any superior title to the regency, wherein he was associated with two other persons. But while the crown itself was hardly acknowledged to be unquestionably hereditary, it would be strange if any notion of such a right to the regency had been entertained. 3. At the accession of Edward III, then fourteen years old, the Parliament, which was immediately summoned, nominated four bishops, four earls, and six barons as a standing council, at the head of which the Earl of Lancaster seems to have been placed, to advise the king in all business of government. It was an article in the charge of treason, or, as it was then styled, of accroaching royal power, against Mortimer, that he intermeddled in the king's household without the assent of

[640] 8 H. V, c. 1.

[641] This prince having been sent to Antwerp, six commissioners were appointed to open Parliament. ("Rot. Parl.," 13 E. III, vol. ii, p. 107.)

[642] Rymer, tome vi, p. 748.

[643] Matt. Paris, p. 243.

[644] Matt. Westmonast. ap. Brady's "History of England," vol. ii, p. 1.

this council.[645] They may be deemed, therefore, a sort of parliamentary regency, though the duration of their functions does not seem to be defined. 4. The proceedings at the commencement of the next reign are more worthy of attention. Edward III dying June 21, 1377, the keepers of the great seal next day, in absence of the chancellor beyond sea, gave it into the young king's hands before his council. He immediately delivered it to the Duke of Lancaster, and the duke to Sir Nicholas Bode for safe custody. Four days afterward the king in council delivered the seal to the Bishop of St. David's, who affixed it the same day to divers letters-patent.[646] Richard was at this time ten years and six months old; an age certainly very unfit for the personal execution of sovereign authority. Yet he was supposed capable of reigning without the aid of a regency. This might be in virtue of a sort of magic ascribed by lawyers to the great seal, the possession of which bars all further inquiry, and renders any government legal. The practice of modern times requiring the constant exercise of the sign manual has made a public confession of incapacity necessary in many cases where it might have been concealed or overlooked in earlier periods of the constitution. But though no one was invested with the office of regent, a council of twelve was named by the prelates and peers at the king's coronation, July 16, 1377, without whose concurrence no public measure was to be carried into effect. I have mentioned in another place the modifications introduced from time to time by Parliament, which might itself be deemed a great council of regency during the first years of Richard.

5. The next instance is at the accession of Henry VI. This prince was but nine months old at his father's death; and whether from a more evident incapacity for the conduct of government in his case than in that of Richard II, or from the progress of constitutional principles in the forty years elapsed since the latter's accession, far more regularity and deliberation were shown in supplying the defect in the executive authority. Upon the news arriving that Henry V was dead, several lords spiritual and temporal assembled, on account of the imminent necessity, in order to preserve peace, and provide for the exercise of officers appertaining to the king. These peers accordingly issued commissions to judges, sheriffs, escheators, and others, for various purposes, and writs for a new Parliament. This was opened by commission under the great seal directed to the Duke of Gloucester, in the usual form, and with the king's teste.[647] Some ordinances were made in this Parliament by the Duke of Gloucester

[645] "Rot. Parl.," vol. ii, p. 52.
[646] Rymer, tome vii, p. 171.
[647] "Rot. Parl.," vol. iv, p. 169.

as commissioner, and some in the king's name. The acts of the peers who had taken on themselves the administration, and summoned Parliament, were confirmed. On the twenty-seventh day of its session, it is entered upon the roll that the king, "considering his tender age, and inability to direct in person the concerns of his realm, by assent of lords and commons, appoints the Duke of Bedford, or, in his absence beyond sea, the Duke of Gloucester, to be protector and defender of the kingdom and English Church, and the king's chief counsellor." Letters-patent were made out to this effect, the appointment being, however, expressly during the king's pleasure. Sixteen councillors were named in Parliament to assist the protector in his administration; and their concurrence was made necessary to the removal and appointment of officers, except some inferior patronage specifically reserved to the protector. In all important business that should pass by order of council, the whole, or major part, were to be present; "but if it were such matter that the king hath been accustomed to be counselled of, that then the said lords proceed not therein without the advice of my Lords of Bedford or Gloucester." [648] A few more councillors were added by the next Parliament, and divers regulations established for their observance.[649]

This arrangement was in contravention of the late king's testament, which had conferred the regency on the Duke of Gloucester, in exclusion of his elder brother. But the nature and spirit of these proceedings will be better understood by a remarkable passage in a roll of a later Parliament; where the House of Lords, in answer to a request of Gloucester that he might know what authority he possessed as protector, remind him that in the first Parliament of the king [650] "ye desired to have had ye governaunce of yis land; affermyng yat hit belonged unto you of rygzt, as well by ye mene of your birth as by ye laste wylle of ye kyng yat was your broyer, whome God assoile; alleggyng for you such groundes and motyves as it was yought to your discretion made for your intent; whereupon, the lords spiritual and temporal assembled there in Parliament, among which were there my lordes your uncles, the Bishop of Winchester that now liveth, and the Duke of Exeter, and your cousin the Earl of March that be gone to God, and of Warwick, and other in great number that now live, had great and long deliberation and advice, searched precedents of the governail of the land in

[648] "Rot. Parl.," vol. iv, pp. 174, 176.
[649] Ibid., p. 201.
[650] I follow the orthography of the roll, which I hope will not be inconvenient to the reader. Why this orthography, from obsolete and difficult, so frequently becomes almost modern, as will appear in the course of these extracts, I can not conjecture. The usual irregularity of ancient spelling is hardly sufficient to account for such variations; but if there be any error, it belongs to the superintendents of that publication, and is not mine.

time and case semblable, when kings of this land have been tender of age, took also information of the laws of the land, of such persons as be notably learned therein, and finally found your said desire not caused nor grounded in precedent, nor in the law of the land; the which the king that dead is, in his life nor might by his last will nor otherwise altre, change, nor abroge, without the assent of the three estates, nor commit or grant to any person governance or rule of this land longer than he lived; but on that other behalf, the said lords found your said desire not according with the laws of this land, and against the right and fredome of the estates of the same land. Howe were it that it be not thought that any such thing wittingly proceeded of your inent; and nevertheless to keep peace and tranquility, and to the intent to ease and appease you, it was advised and appointed by authority of the king, assenting the three estates of this land, that ye, in absence of my lord your brother of Bedford, should be chief of the king's council, and devised unto you a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that should import authority of governance of the land, but the name of protector and defensor, which importeth a personal duty of attendance to the actual defence of the land, as well against enemies outward, if case required, as against rebels inward, if any were, that God forbid; granting you therewith certain power, the which is specified and contained in an act of the said Parliament, to endure as long as it liked the king. In the which, if the intent of the said estates had been that ye more power and authority should have had, more should have been expressed therein; to the which appointment, ordinance, and act, ye then agreed you as for your person, making nevertheless protestation that it was not your intent in any wise to deroge or do prejudice unto my lord your brother of Bedford by your said agreement, as toward any right that he would pretend or claim in the governance of this land; and as toward any pre-eminence that you might have or belong unto you as chief of council, it is plainly declared in the said act and articles, subscribed by my said Lord of Bedford, by yourself, and the other lords of the council. But as in Parliament to which ye be called upon your faith and ligeance as Duke of Glocester, as other lords be, and not otherwise, we know no power nor authority that ye have, other than ye as Duke of Glocester should have, the king being in Parliament, at years of mest discretion: We marvailing with all our hearts that, considering the open declaration of the authority and power belonging to my Lord of Bedford and to you in his absence, and also to the king's council subscribed purely and simply by my said Lord of Bedford and by you, that you should in

any wise be stirred or moved not to content you therewith or to pretend you any other: Namely, considering that the king, blessed be our Lord, is, sith the time of the said power granted unto you, far gone and grown in person, in wit, and understanding, and like with the grace of God to occupy his own royal power within few years: and forasmuch considering the things and causes abovesaid, and other many that long were to write, We lords aforesaid pray, exhort, and require you to content you with the power abovesaid and declared, of the which my lord your brother of Bedford, the king's eldest uncle, contented him: and that ye none larger power desire, will, nor use; giving you this that is aboven written for our answer to your aforesaid demand, the which we will dwell and abide with, withouten variance or changing. Over this beseeching and praying you in our most humble and lowly wise, and also requiring you in the king's name, that ye, according to the king's commandment, contained in his writ sent unto you in that behalf, come to this his present Parliament, and intend to the good effect and speed of matters to be demesned and treted in the same, like as of right ye owe to do." [651]

It is evident that this plain, or rather rude, address to the Duke of Gloucester was dictated by the prevalence of Cardinal Beaufort's party in council and Parliament. But the transactions in the former Parliament are not unfairly represented; and, comparing them with the passage extracted above, we may perhaps be entitled to infer: 1. That the king does not possess any constitutional prerogative of appointing a regent during the minority of his successor; and 2, that neither the heir presumptive, nor any other person, is entitled to exercise the royal prerogative during the king's infancy (or, by parity of reasoning, his infirmity), nor to any title that conveys them; the sole right of determining the persons by whom, and fixing the limitations under which, the executive government shall be conducted in the king's name and behalf, devolving upon the great council of Parliament.

The expression used in the lords' address to the Duke of Gloucester, relative to the young king, that he was far gone and grown in person, wit, and understanding, was not thrown out in mere flattery. In two years the party hostile to Gloucester's influence had gained ground enough to abrogate his office of protector, leaving only the honorary title of chief counsellor.[652] For this the king's coronation, at eight years of age, was thought a fair pretence; and undoubtedly the loss of that exceedingly limited authority which had been delegated to the protector could not have impaired the strength of government. This was con-

[651] "Rot. Parl.," 6 H. VI, vol. iv, p. 326.
[652] "Rot. Parl.," 8 H. VI, vol. iv, p. 336.

ducted as before by a selfish and disunited council; but the king's name was sufficient to legalize their measures, nor does any objection appear to have been made in Parliament to such a mockery of the name of monarchy.

In the year 1454, the thirty-second of Henry's reign, his unhappy malady, transmitted perhaps from his maternal grandfather, assumed so decided a character of derangement or imbecility that Parliament could no longer conceal from itself the necessity of a more efficient ruler. This assembly, which had been continued by successive prorogations for nearly a year, met at Westminster on the 14th of February, when the session was opened by the Duke of York, as king's commissioner. Kent, Archbishop of Canterbury and Chancellor of England, dying soon afterward, it was judged proper to acquaint the king at Windsor by a deputation of twelve lords with this and other subjects concerning his government. In fact, perhaps, this was a pretext chosen in order to ascertain his real condition. These peers reported to the lords' House, two days afterward, that they had opened to his Majesty the several articles of their message, but "could get no answer ne sign for no prayer ne desire," though they repeated their endeavours at three different interviews. This report, with the instruction on which it was founded, was, at their prayer, entered of record in Parliament. Upon so authentic a testimony of their sovereign's infirmity, the peers, adjourning two days for solemnity or deliberation, "elected and nominated Richard, Duke of York, to be protector and defender of the realm of England during the king's pleasure." The duke, protesting his insufficiency, requested that "in this present Parliament, and by authority thereof, it be enacted that, of yourself and of your ful and mere disposition, ye desire, name, and call me to the said name and charge, and that of any presumption of myself I take them not upon me, but only of the due and humble obeisance that I owe to do unto the king our most dread and sovereign lord, and to you the peerage of this land, in whom by the occasion of the infirmity of our said sovereign lord resteth the exercise of his authority, whose noble commandments I am as ready to perform and obey as any of his liegemen alive, and that, at such time as it shall please our blessed Creator to restore his most noble person to healthful disposition, it shall like you so to declare and notify to his good grace." To this protestation the lords answered that, for his and their discharge, an act of Parliament should be made conformably to that enacted in the king's infancy, since they were compelled by an equal necessity again to choose and name a protector and defender. And to the Duke of York's request to be informed how far the power and authority of his charge should extend,

they replied that he should be chief of the king's council, and "devised therefore to the said duke a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that shall import authority of governance of the land; but the said name of protector and defensor," and so forth, according to the language of their former address to the Duke of Gloucester. An act was passed, accordingly, constituting the Duke of York protector of the Church and kingdom, and chief counsellor of the king, during the latter's pleasure, or until the Prince of Wales should attain years of discretion, on whom the said dignity was immediately to devolve. The patronage of certain spiritual benefices was reserved to the protector according to the precedent of the king's minority, which Parliament was resolved to follow in every particular.[653]

It may be conjectured, by the provision made in favour of the Prince of Wales, then only two years old, that the king's condition was supposed to be beyond hope of restoration. But in about nine months he recovered sufficient speech and recollection to supersede the Duke of York's protectorate.[654] The succeeding transactions are matter of familiar though not, perhaps, very perspicuous history. The king was a prisoner in his enemies' hands after the affair at St. Albans,[655] when Parliament met in July, 1455. In this session little was done, except renewing the strongest oaths of allegiance to Henry and his family. But the two Houses meeting again after a prorogation to November 12th, during which time the Duke of York had strengthened his party, and was appointed by commission the king's lieutenant to open the Parliament, a proposition was made by the commons that, "whereas the king had deputed the Duke of York as his commissioner to proceed in this Parliament, it was thought by the commons that, if the king hereafter could not attend to the protection of the country, an able person should be appointed protector, to whom they might have recourse for redress of injuries, especially as great disturbances had lately arisen in the west through the feuds of the Earl of Devonshire and Lord Bonvile."[656] The Archbishop of Canterbury answered

[653] "Rot. Parl.," vol. v, p. 241.

[654] "Paston Letters," vol. i, p. 81. The proofs of sound mind given in this letter are not very decisive, but the wits of sovereigns are never weighed in golden scales.

[655] This may seem an improper appellation for what is usally termed a battle, wherein 5,000 men are said to have fallen. But I rely here upon my faithful guide, the "Paston Letters," p. 100, one of which, written immediately after the engagement, says that only sixscore were killed. Surely this testimony outweighs a thousand ordinary chroniclers. And the nature of the action, which was a sudden attack on the town of St. Albans, without any pitched combat, renders the larger number improbable. Whethamstede, himself abbot of St. Albans at the time, makes the Duke of York's army but 3,000 fighting men (p. 352). This account of the trifling loss of life in the battle of St. Albans is confirmed by a contemporary letter, published in the "Archæologia" (xx, 519). The whole number of the slain was but forty-eight, including, however, several lords.

[656] See some account of these in "Paston Letters," vol. i, p. 114.

for the lords that they would take into consideration what the commons had suggested. Two days afterward the latter appeared again with a request conveyed nearly in the same terms. Upon their leaving the chamber, the archbishop, who was also chancellor, moved the peers to answer what should be done in respect of the request of the commons; adding that "it is understood that they will not further proceed in matters of Parliament to the time that they have answer to their desire and request." This naturally ended in the reappointment of the Duke of York to his charge of protector. The commons, indeed, were determined to bear no delay. As if ignorant of what had been resolved in consequence of their second request, they urged it a third time, on the next day of meeting; and received for answer that "the king our said sovereign lord, by the advice and assent of his lords spiritual and temporal being in this present Parliament, had named and desired the Duke of York to be protector and defensor of this land." It is worthy of notice that in these words, and indeed in effect, as appears by the whole transaction, the House of Peers assumed an exclusive right of choosing the protector, though, in the act passed to ratify their election, the commons' assent, as a matter of course, is introduced. The last year's precedent was followed in the present instance, excepting a remarkable deviation: instead of the words "during the king's pleasure," the duke was to hold his office "until he should be discharged of it by the lords in Parliament." [657]

This extraordinary clause, and the slight allegations on which it was thought fit to substitute a vicegerent for the reigning monarch, are sufficient to prove, even if the common historians were silent, that whatever passed as to this second protectorate of the Duke of York was altogether of a revolutionary complexion. In the actual circumstances of civil blood already spilled and the king in captivity, we may justly wonder that so much regard was shown to the regular forms and precedents of the constitution. But the duke's natural moderation will account for part of this, and the temper of the lords for much more. That assembly appears for the most part to have been faithfully attached to the house of Lancaster. The partisans of Richard were found in the commons and among the populace. Several months elapsed after the victory of St. Albans before an attempt was thus made to set aside a sovereign, not labouring, so far as we know, under any more notorious infirmity than before. It then originated in the commons, and seems to have received but an unwilling consent from the upper House. Even in constituting the Duke of York protector over the head of Henry, whom all men despaired of ever seeing in a state to face the dangers of such

[657] "Rot. Parl.," vol. v, pp. 284–290.

a season, the lords did not forget the rights of his son. By this latter instrument, as well as by that of the preceding year, the duke's office was to cease upon the Prince of Wales arriving at the age of discretion.

But what had long been propagated in secret soon became familiar to the public ear—that the Duke of York laid claim to the throne. He was unquestionably heir general of the royal line, through his mother Anne, daughter of Roger Mortimer, Earl of March, son of Philippa, daughter of Lionel, Duke of Clarence, third son of Edward III. Roger Mortimer's eldest son, Edmund, had been declared heir presumptive by Richard II; but his infancy during the revolution that placed Henry IV on the throne had caused his pretensions to be passed over in silence. The new king, however, was induced by a jealousy natural to his situation to detain the Earl of March in custody. Henry V restored his liberty; and, though he had certainly connived for a while at the conspiracy planned by his brother-in-law, the Earl of Cambridge, and Lord Scrope of Masham to place the crown on his head, that magnanimous prince gave him a free pardon, and never testified any displeasure. The present Duke of York was honoured by Henry VI with the highest trusts in France and Ireland, such as Beaufort and Gloucester could never have dreamed of conferring on him if his title to the crown had not been reckoned obsolete. It has been very pertinently remarked that the crime perpetrated by Margaret and her counsellors in the death of the Duke of Gloucester was the destruction of the house of Lancaster.[658] From this time the Duke of York, next heir in presumption while the king was childless, might innocently contemplate the prospect of royalty; and when such ideas had long been passing through his mind, we may judge how reluctantly the birth of Prince Edward, nine years after Henry's marriage, would be admitted to disturb them. The queen's administration unpopular, careless of national interests, and partial to his inveterate enemy, the Duke of Somerset;[659] the king incapable of exciting fear or respect; himself conscious of powerful alliances and universal favour—all these circumstances combined could hardly fail to nourish those opinions of hereditary right which he must have imbibed from his infancy.

The Duke of York preserved through the critical season of rebellion such moderation and humanity that we may pardon him that bias in favour of his own pretensions to which he became himself a victim. Margaret perhaps, by her sanguinary violence in the Coventry Parliament of 1460, where the duke

[658] Hall, p. 210.

[659] The ill-will of York and the queen began as early as 1449, as we learn from an unequivocal testimony, a letter of that date in the Paston collection, vol. i, p. 26.

and all his adherents were attainted, left him not the choice of remaining a subject with impunity. But with us, who are to weigh these ancient factions in the balance of wisdom and justice, there should be no hesitation in deciding that the house of Lancaster were lawful sovereigns of England. I am, indeed, astonished that not only such historians as Carte, who wrote undisguisedly upon a Jacobite system, but even men of juster principles, have been inadvertent enough to mention the right of the house of York. If the original consent of the nation, if three descents of the crown, if repeated acts of Parliament, if oaths of allegiance from the whole kingdom, and more particularly from those who now advanced a contrary pretension, if undisturbed, unquestioned possession during sixty years, could not secure the reigning family against a mere defect in their genealogy, when were the people to expect tranquility? Sceptres were committed, and governments were instituted, for public protection and public happiness, not certainly for the benefit of rulers, or for the security of particular dynasties. No prejudice has less in its favour, and none has been more fatal to the peace of mankind, than that which regards a nation of subjects as a family's private inheritance. For, as this opinion induces reigning princes and their courtiers to look on the people as made only to obey them, so, when the tide of events has swept them from their thrones, it begets a fond hope of restoration, a sense of injury and of imprescriptible rights, which give the show of justice to fresh disturbances of public order, and rebellions against established authority. Even in cases of unjust conquest, which are far stronger than any domestic revolution, time heals the injury of wounded independence, the forced submission to a victorious enemy is changed into spontaneous allegiance to a sovereign, and the laws of God and nature enjoin the obedience that is challenged by reciprocal benefits. But far more does every national government, however violent in its origin, become legitimate, when universally obeyed and justly exercised, the possession drawing after it the right; not certainly that success can alter the moral character of actions, or privilege usurpation before the tribunal of human opinion, or in the pages of history, but that the recognition of a government by the people is the binding pledge of their allegiance so long as its corresponding duties are fulfilled.[660] And thus the law of England has been held to annex the subject's fidelity to the reigning monarch, by whatever title he may have ascended the throne, and whoever else may be its claimant.[661] But the statute of eleventh of Henry

[660] Upon this great question the fourth discourse in Sir Michael Foster's "Reports" ought particularly to be read.

[661] Hale's "Pleas of the Crown," vol. i, pp. 61, 101 (edit. 1736).

VII, c. 1, has furnished an unequivocal commentary upon this principle, when, alluding to the condemnations and forfeitures by which those alternate successes of the white and red roses had almost exhausted the noble blood of England, it enacts that "no man for doing true and faithful service to the king for the time being be convict or attaint of high treason, nor of other offences, by act of Parliament or otherwise."

Though all classes of men and all parts of England were divided into factions by this unhappy contest, yet the strength of the Yorkists lay in London and the neighbouring counties, and generally among the middling and lower people. And this is what might naturally be expected. For notions of hereditary right take easy hold of the populace, who feel an honest sympathy for those whom they consider as injured; while men of noble birth and high station have a keener sense of personal duty to their sovereign, and of the baseness of deserting their allegiance. Notwithstanding the widespreading influence of the Nevils, most of the nobility were well affected to the reigning dynasty. We have seen how reluctantly they acquiesced in the second protectorate of the Duke of York after the battle of St. Albans. Thirty-two temporal peers took an oath of fealty to Henry and his issue in the Coventry Parliament of 1460, which attainted the Duke of York and the Earls of Warwick and Salisbury.[662] And in the memorable circumstances of the duke's claim personally made in Parliament, it seems manifest that the lords complied not only with hesitation but unwillingness, and, in fact, testified their respect and duty for Henry by confirming the crown to him during his life.[663] The rose of Lancaster blushed upon the banners of the Staffords, the Percies, the Veres, the Hollands, and the Courtneys. All these illustrious families lay crushed for a time under the ruins of their party. But the course of fortune, which has too great a mastery over crowns and sceptres to be controlled by men's affection, invested Edward IV with a possession which the general consent of the nation both sanctioned and secured. This was effected in no slight degree by the furious spirit of Margaret, who began a system of extermination by acts of attainder and execution of prisoners that created abhorrence, though it did not prevent imitation. And the barbarities of her northern army, whom she led toward London after the battle of Wakefield, lost the Lancastrian cause its former

[662] "Rot. Parl.," vol. v, p. 351.

[663] Id., p. 375. This entry in the roll is highly interesting and important. It ought to be read in preference to any of our historians. Hume, who drew from inferior sources, is not altogether accurate. Yet one remarkable circumstance, told by Hall and other chroniclers, that the Duke of York stood by the throne, as if to claim it, though omitted entirely in the roll, is confirmed by Whethamstede, abbot of St. Albans, who was probably then present. (P. 484, edit. Hearne.) This shows that we should only doubt, and not reject, unless upon real grounds of suspicion, the assertions of secondary writers.

friends,[664] and might justly convince reflecting men that it were better to risk the chances of a new dynasty than trust the kingdom to an exasperated faction.

A period of obscurity and confusion ensues, during which we have as little insight into constitutional as general history. There are no contemporary chroniclers of any value, and the rolls of Parliament, by whose light we have hitherto steered, become mere registers of private bills, or of petitions relating to commerce. The reign of Edward IV is the first during which no statute was passed for the redress of grievances or maintenance of the subject's liberty. Nor is there, if I am correct, a single petition of this nature upon the roll. Whether it were that the commons had lost too much of their ancient courage to present any remonstrances, or that a wilful omission has vitiated the record, is hard to determine; but we certainly must not imagine that a government cemented with blood poured on the scaffold, as well as in the field, under a passionate and unprincipled sovereign, would afford no scope for the just animadversion of Parliament.[665] The reign of Edward IV was a reign of terror. One half of the noble families had been thinned by proscription; and though generally restored in blood by the reversal of their attainders—a measure certainly deserving of much approbation—were still under the eyes of vigilant and inveterate enemies. The opposite faction would be cautious how they resisted a king of their own creation, while the hopes of their adversaries were only dormant. And indeed, without relying on this supposition, it is commonly seen that, when temporary circumstances have given a king the means of acting in disregard of his subjects' privileges, it is a very difficult undertaking for them to recover a liberty which has no security so effectual as habitual possession.

Besides the severe proceedings against the Lancastrian party, which might be extenuated by the common pretences, retaliation of similar proscriptions, security for the actual government, or just punishment of rebellion against a legitimate heir, there are several reputed instances of violence and barbarity in the reign of Edward IV which have not such plausible excuses. Every one knows the common stories of the citizen who was attainted for treason for an idle speech that he would make his

[664] The abbey of St. Albans was stripped by the queen and her army after the second battle fought at that place, February 17, 1461; which changed Whethamstede, the abbot and historiographer, from a violent Lancastrian into a Yorkist. His change of party is quite sudden, and amusing enough. See, too, the "Paston Letters," vol. i, p. 206. Yet the Paston family were originally Lancastrian, and returned to that side in 1470.

[665] There are several instances of violence and oppression apparent on the rolls during this reign, but not proceeding from the crown. One of a remarkable nature (volume v, page 173) was brought forward to throw an odium on the Duke of Clarence, who had been concerned in it. Several passages indicate the character of the Duke of Gloucester.

son heir to the crown, the house where he dwelt; and of Thomas Burdett, who wished the horns of his stag in the belly of him who had advised the king to shoot it. Of the former I can assert nothing, though I do not believe it to be accurately reported. But certainly the accusation against Burdett, however iniquitous, was not confined to these frivolous words; which, indeed, do not appear in his indictment,[666] or in a passage relative to his conviction in the roll of Parliament. Burdett was a servant and friend of the Duke of Clarence, and sacrificed as a preliminary victim. It was an article of charge against Clarence that he had attempted to persuade the people that "Thomas Burdett, his servant, which was lawfully and truly attainted of treason, was wrongfully put to death."[667] There could, indeed, be no more oppressive usage inflicted upon meaner persons than this attainder of the Duke of Clarence—an act for which a brother could not be pardoned had he been guilty, and which deepens the shadow of a tyrannical age if, as it seems, his offence toward Edward was but levity and rashness.

But whatever acts of injustice we may attribute, from authority or conjecture, to Edward's government, it was very far from being unpopular. His love of pleasure, his affability, his courage and beauty, gave him a credit with his subjects which he had no real virtue to challenge. This restored him to the throne, even against the prodigious influence of Warwick, and compelled Henry VII to treat his memory with respect, and acknowledge him as a lawful king.[668] The latter years of his reign

[666] See in "Cro. Car.," 120, the indictment against Burdett for compassing the king's death, and for that purpose conspiring with Stacie and Blake to calculate his nativity and his son's, ad sciendum quando iidem rex et Edwardus ejus filius morientur: Also for the same end dispersing divers rhymes and ballads de murmurationibus, seditionibus et proditoriis excitationibus, factas et fabricatas apud Holbourn, to the intent that the people might withdraw their love from the king and desert him, ac erga ipsum regem insurgerent, et guerram erga ipsum regem levarent, ad finalem destructionem ipsorum regis ac domini principis, etc.

[667] "Rot. Parl., vol. vi, p. 193.

[668] The rolls of Henry VII's first Parliament are full of an absurd confusion in thought and language, which is rendered odious by the purposes to which it is applied. Both Henry VI and Edward IV are considered as lawful kings; except in one instance, where Alan Cotterell, petitioning for the reversal of his attainder, speaks of Edward, "late called Edward IV" (vol. iv, p. 290). But this is only the language of a private Lancastrian. And Henry VI passes for having been king during his short restoration in 1470, when Edward had been nine years upon the throne. For the Earl of Oxford is said to have been attainted "for the true allegiance and service he owed and did to Henry VI. at Barnet field and otherwise" (p. 281). This might be reasonable enough on the true principle that allegiance is due to a king de facto; if indeed we could determine who was the king de facto on the morning of the battle of Barnet. But this principle was not fairly recognised. Richard III is always called, "in deed and not in right King of England." Nor was this merely founded on his usurpation as against his nephew. For that unfortunate boy is little better treated, and in the act of resumption, 1 H. VII, while Edward IV is styled "late king," appears only with the denomination of "Edward his son, late called Edward V" (p. 336). Who then was king after the death of Edward IV? And was his son really illegitimate, as a usurping uncle pretended? Or did the crime of Richard, though punished in him, inure to the benefit of Henry? These were points which, like the fate of the young princes in the Tower, he chose to wrap in discreet silence. But the first question he seems to have answered in his own favour. For Richard himself, Howard, Duke of Norfolk, Lord Lovel, and some

were passed in repose at home after scenes of unparalleled convulsions, and in peace abroad after more than a century of expensive warfare. His demands of subsidy were therefore moderate, and easily defrayed by a nation which was making rapid advances toward opulence. According to Sir John Fortescue, nearly one fifth of the whole kingdom had come to the king's hand by forfeiture at some time or other since the commencement of his reign.[669] Many indeed of these lands had been restored, and others lavished away in grants, but the surplus revenue must still have been considerable.

Edward IV was the first who practised a new method of taking his subjects' money without consent of Parliament, under the plausible name of benevolences. These came in place of the still more plausible loans of former monarchs, and were principally levied on the wealthy traders. Though no complaint appears in the parliamentary records of his reign, which, as has been observed, complain of nothing, the illegality was undoubtedly felt and resented. In the remarkable address to Richard by that tumultuary meeting which invited him to assume the crown, we find, among general assertions of the state's decay through misgovernment, the following strong passage: "For certainly we be determined rather to aventure and committe us to the perill of owre lyfs and jopardie of deth, than to lyve in such thraldome and bondage as we have lyved long tyme heretofore, oppressed and injured by extortions and newe impositions ayenst the lawes of God and man, and the libertie, old policie, and lawes of this realme, whereyn every Englishman is inherited." [670] Accordingly, in Richard III's only Parliament an act was passed which, after reciting in the strongest terms the grievances lately endured, abrogates and annuls forever all exactions under the name of benevolence.[671] The liberties of this country were at least not directly impaired by the usurpation of Richard. But from an act so deeply tainted with moral guilt, as well as so violent in all its circumstances, no substantial benefit was likely to spring. Whatever difficulty there may be in deciding upon the fate of Richard's nephews after they were immured in the Tower, the more public parts of the transaction bear unequivocal testimony to his ambitious usurpation.[672] It would therefore be for-

others, are attainted (p. 276) for "traiterously intending, compassing, and imagining" the death of Henry; of course, before or at the battle of Bosworth; and while his right, unsupported by possession, could have rested only on an hereditary title which it was an insult to the nation to prefer. These monstrous proceedings explain the necessity of that conservative statute to which I have already alluded, which passed in the eleventh year of his reign, and afforded as much security for men following the plain line of rallying round the standard of their country as mere law can offer. There is some extraordinary reasoning upon this act in Carte's "History" (vol. ii, p. 844), for the purpose of proving that the adherents of George II would not be protected by it on the restoration of the true blood.

[669] "Difference of Absolute and Limited Monarchy," p. 83.

[670] "Rot. Parl.," vol. vi, p. 241.

[671] 1 R. III, c. 2.

[672] The long-debated question as to the

eign to the purpose of this chapter to dwell upon his assumption of the regency, or upon the sort of election, however curious and remarkable, which gave a pretended authority to his usurpation of the throne. Neither of these has ever been alleged by any party in the way of constitutional precedent.

At this epoch I terminate these inquiries into the English constitution; a sketch very imperfect, I fear, and unsatisfactory, but which may at least answer the purpose of fixing the reader's attention on the principal objects, and of guiding him to the purest fountains of constitutional knowledge. From the accession of the house of Tudor a new period is to be dated in our history, far more prosperous in the diffusion of opulence and the preservation of general order than the preceding, but less distinguished by the spirit of freedom and jealousy of tyrannical power. We have seen, through the twilight of our Anglo-Saxon records, a form of civil policy established by our ancestors, marked, like the kindred governments of the Continent, with aboriginal Teutonic features; barbarous indeed, and insufficient for the great ends of society, but capable and worthy of the improvement it has received, because actuated by a sound and vital spirit, the love of freedom and of justice. From these principles arose that venerable institution, which none but a free and simple people could have conceived, trial by peers—an institution common in some degree to other nations, but which, more widely extended, more strictly retained, and better modified among ourselves, has become perhaps the first, certainly among the first, of our securities against arbitrary government. We have seen a foreign conqueror and his descendants trample almost alike upon the prostrate nation and upon those who had been companions of their victory, introduce the servitudes of feudal law with more than their usual rigour, and establish a large revenue by continual precedents upon a system of universal and prescriptive extortion. But the Norman and English races, each unfit to endure oppression, forgetting their animosities in a common interest, enforce by arms the concession of a great charter of liberties. Privileges wrested from one faithless monarch are preserved with continual vigilance against the machinations of another; the rights of the people become more precise, and their spirit more magnanimous, during the long reign of Henry III. With greater ambition and greater abilities than his father, Edward I attempts in vain to govern in an arbitrary manner, and has the mortification of seeing his prerogative fettered by still

murder of Edward and his brother seems to me more probably solved on the common supposition that it was really perpetrated by the orders of Richard, than on that of Walpole, Carte, Henry, and Laing, who maintain that the Duke of York, at least, was in some way released from the Tower, and reappeared as Perkin Warbeck. But a very strong conviction either way is not readily attainable.

more important limitations. The great council of the nation is opened to the representatives of the commons. They proceed by slow and cautious steps to remonstrate against public grievances, to check the abuses of administration, and sometimes to chastise public delinquency in the officers of the crown. A number of remedial provisions are added to the statutes; every Englishman learns to remember that he is the citizen of a free state, and to claim the common law as his birthright, even though the violence of power should interrupt its enjoyment. It were a strange misrepresentation of history to assert that the constitution had attained anything like a perfect state in the fifteenth century; but I know not whether there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institution, which may not be traced to the time when the house of Plantagenet filled the English throne.

CHAPTER IX[1]

STATE OF SOCIETY IN EUROPE DURING THE MIDDLE AGES

Introduction—Decline of literature in the latter period of the Roman Empire—Its causes—Corruption of the Latin language—Means by which it was effected—Formation of new languages—General ignorance of the dark ages—Scarcity of books—Causes that prevented the total extinction of learning—Prevalence of superstition and fanaticism—General corruption of religion—Monasteries—Their effects—Pilgrimages—Love of field sports—State of agriculture—Of internal and foreign trade down to the end of the eleventh century—Improvement of Europe dated from that age—Progress of commercial improvement in Germany, Flanders, and England—In the north of Europe—In the countries upon the Mediterranean Sea—Maritime laws—Usury—Banking companies—Progress of refinement in manners—Domestic architecture—Ecclesiastical architecture—State of agriculture in England—Value of money—Improvement of the moral character of society—Its causes—Police—Changes in religious opinion—Various sects—Chivalry—Its progress, character, and influence—Causes of the intellectual improvement of European society—1. The study of civil law—2. Institution of universities—Their celebrity—Scholastic philosophy—3. Cultivation of modern languages—Provençal poets—Norman poets—French prose writers—Italian—Early poets in that language—Dante—Petrarch—English language—Its progress—Chaucer—4. Revival of classical learning—Latin writers of the twelfth century—Literature of the fourteenth century—Greek literature—Its restoration in Italy—Invention of printing.

IT has been the object of every preceding chapter of this work either to trace the civil revolutions of states during the period of the middle ages, or to investigate, with rather more minute attention, their political institutions. There remains a large tract to be explored, if we would complete the circle of historical information, and give to our knowledge that copiousness and clear perception which arise from comprehending a subject under numerous relations. The philosophy of history embraces far more than the wars and treaties, the factions and cabals of common political narration; it extends to whatever illustrates the character of the human species in a particular period, to their reasonings and sentiments, their arts and industry. Nor is this comprehensive survey merely interesting to the speculative philosopher; without it the statesman would form very erroneous estimates of events, and find himself constantly misled in any

[1] The subject of the present chapter, so far as it relates to the condition of literature in the middle ages, has been again treated by me in the first and second chapters of a work, published in 1836, the "Introduction to the History of Literature in the Fifteenth, Sixteenth, and Seventeenth Centuries." Some things will be found in it more exactly stated, others newly supplied from recent sources.

analogical application of them to present circumstances. Nor is it an uncommon source of error to neglect the general signs of the times, and to deduce a prognostic from some partial coincidence with past events, where a more enlarged comparison of all the facts that ought to enter into the combination would destroy the whole parallel. The philosophical student, however, will not follow the antiquary into his minute details; and though it is hard to say what may not supply matter for a reflecting mind, there is always some danger of losing sight of grand objects in historical disquisition by too laborious a research into trifles. I may possibly be thought to furnish, in some instances, an example of the error I condemn. But in the choice and disposition of topics to which the present chapter relates, some have been omitted on account of their comparative insignificance, and others on account of their want of connection with the leading subject. Even of those treated I can only undertake to give a transient view; and must bespeak the reader's candour to remember that passages which, separately taken, may often appear superficial, are but parts of the context of a single chapter, as the chapter itself is of an entire work.

The middle ages, according to the division I have adopted, comprise about one thousand years, from the invasion of France by Clovis to that of Naples by Charles VIII. This period, considered as to the state of society, has been esteemed dark through ignorance, and barbarous through poverty and want of refinement. And although this character is much less applicable to the last two centuries of the period than to those which preceded its commencement, yet we can not expect to feel, in respect of ages at best imperfectly civilized and slowly progressive, that interest which attends a more perfect development of human capacities, and more brilliant advances in improvement. The first moiety, indeed, of these ten ages is almost absolutely barren, and presents little but a catalogue of evils. The subversion of the Roman Empire, and devastation of its provinces, by barbarous nations, either immediately preceded, or were coincident with the commencement of the middle period. We begin in darkness and calamity; and though the shadows grow fainter as we advance, yet we are to break off our pursuit as the morning breathes upon us, and the twilight reddens into the lustre of day.

No circumstance is so prominent on the first survey of society during the earlier centuries of this period as the depth of ignorance in which it was immersed; and as from this, more than any single cause, the moral and social evils which those ages experience appear to have been derived and perpetuated, it deserves to occupy the first place in the arrangement of our present

subject. We must not altogether ascribe the ruin of literature to the barbarian destroyers of the Roman Empire. So gradual, and, apparently, so irretrievable a decay had long before spread over all liberal studies that it is impossible to pronounce whether they would not have been almost equally extinguished if the august throne of the Cæsars had been left to moulder by its intrinsic weakness. Under the paternal sovereignty of Marcus Aurelius the approaching declension of learning might be scarcely perceptible to an incurious observer. There was much, indeed, to distinguish his times from those of Augustus; much lost in originality of genius, in correctness of taste, in the masterly conception and consummate finish of art, in purity of the Latin, and even of the Greek language. But there were men who made the age famous, grave lawyers, judicious historians, wise philosophers; the name of learning was honourable, its professors were encouraged; and along the vast surface of the Roman Empire there was perhaps a greater number whose minds were cultivated by intellectual discipline than under the more brilliant reign of the first emperor.

It is not, I think, very easy to give a perfectly satisfactory solution of the rapid downfall of literature between the ages of Antoninus and of Diocletian. Perhaps the prosperous condition of the empire from Trajan to Marcus Aurelius, and the patronage which those good princes bestowed on letters, gave an artificial health to them for a moment, and suspended the operation of a disease which had already begun to undermine their vigour. Perhaps the intellectual energies of mankind can never remain stationary; and a nation that ceases to produce original and inventive minds, born to advance the landmarks of knowledge or skill, will recede from step to step, till it loses even the secondary merits of imitation and industry. During the third century not only were there no great writers, but even few names of indifferent writers have been recovered by the diligence of modern inquiry.[2] Law neglected, philosophy perverted till it became contemptible, history nearly silent, the Latin tongue growing rapidly barbarous, poetry rarely and feebly attempted, art more and more vitiated; such were the symptoms by which the age previous to Constantine announced the decline of the human intellect. If we can not fully account for this unhappy change, as I have observed, we must, however, assign much weight to the degradation of Rome and Italy in the system of Severus and his successors, to the admission of barbarians into the military and even civil dignities of the empire, to the discouraging influ-

[2] The authors of "Histoire Littéraire de la France," tome i, can only find three writers of Gaul, no inconsiderable part of the Roman Empire, mentioned upon any authority; two of whom are now lost. In the preceding century the number was considerably greater.

ence of provincial and illiterate sovereigns, and to the calamities which followed for half a century the first invasion of the Goths and the defeat of Decius. To this sickly condition of literature the fourth century supplied no permanent remedy. If under the house of Constantine the Roman world suffered rather less from civil warfare or barbarous invasions than in the preceding age, yet every other cause of decline just enumerated prevailed with aggravated force; and the fourth century set in storms, sufficiently destructive in themselves, and ominous of those calamities which humbled the majesty of Rome at the commencement of the ensuing period, and overwhelmed the Western Empire in absolute and final ruin before its termination.

The diffusion of literature is perfectly distinguishable from its advancement; and whatever obscurity we may find in explaining the variations of the one, there are a few simple causes which seem to account for the other. Knowledge will be spread over the surface of a nation in proportion to the facilities of education; to the free circulation of books; to the emoluments and distinctions which literary attainments are found to produce; and still more to the reward which they meet in the general respect and applause of society. This cheering incitement, the genial sunshine of approbation, has at all times promoted the cultivation of literature in small republics rather than large empires, and in cities compared with the country. If these are the sources which nourish literature, we should naturally expect that they must have become scanty or dry when learning languishes or expires. Accordingly, in the later ages of the Roman Empire a general indifference toward the cultivation of letters became the characteristic of its inhabitants. Laws were indeed enacted by Constantine, Julian, Theodosius, and other emperors, for the encouragement of learned men and the promotion of liberal education. But these laws, which would not perhaps have been thought necessary in better times, were unavailing to counteract the lethargy of ignorance in which even the native citizens of the empire were contented to repose. This alienation of men from their national literature may doubtless be imputed in some measure to its own demerits. A jargon of mystical philosophy, half fanaticism and half imposture, a barren and inflated eloquence, a frivolous philology, were not among those charms of wisdom by which man is to be diverted from pleasure or aroused from indolence.

In this temper of the public mind there was little probability that new compositions of excellence would be produced, and much doubt whether the old would be preserved. Since the invention of printing, the absolute extinction of any considerable work seems a danger too improbable for apprehension. The

press pours forth in a few days a thousand volumes, which, scattered like seeds in the air over the republic of Europe, could hardly be destroyed without the extirpation of its inhabitants. But in the times of antiquity manuscripts were copied with cost, labour, and delay; and if the diffusion of knowledge be measured by the multiplication of books, no unfair standard, the most golden ages of ancient learning could never bear the least comparison with the last three centuries. The destruction of a few libraries by accidental fire, the desolation of a few provinces by unsparing and illiterate barbarians, might annihilate every vestige of an author, or leave a few scattered copies, which, from the public indifference, there was no inducement to multiply, exposed to similar casualties in succeeding times.

We are warranted by good authorities to assign as a collateral cause of this irretrievable revolution the neglect of heathen literature by the Christian Church. I am not versed enough in ecclesiastical writers to estimate the degree of this neglect, nor am I disposed to deny that the mischief was beyond recovery before the accession of Constantine. From the primitive ages, however, it seems that a dislike of pagan learning was pretty general among Christians. Many of the fathers undoubtedly were accomplished in liberal studies, and we are indebted to them for valuable fragments of authors whom we have lost. But the literary character of the Church is not to be measured by that of its more illustrious leaders. Proscribed and persecuted, the early Christians had not perhaps access to the public schools, nor inclination to studies which seemed, very excusably, uncongenial to the character of their profession. Their prejudices, however, survived the establishment of Christianity. The fourth Council of Carthage in 398 prohibited the reading of secular books by bishops. Jerome plainly condemns the study of them except for pious ends. All physical science especially was held in avowed contempt, as inconsistent with revealed truths. Nor do there appear to have been any canons made in favour of learning, or any restriction on the ordination of persons absolutely illiterate.[8] There was indeed abundance of what is called theological learning displayed in the controversies of the fourth and fifth centuries; and those who admire such disputations may consider the principal champions in them as contributing to the glory, or at least retarding the decline, of literature. But I believe rather that polemical disputes will be found not only to corrupt the genuine spirit of religion, but to degrade and contract the faculties. What keenness and subtlety these may some-

[8] Mosheim, Cent. 4. Tiraboschi endeavours to elevate higher the learning of the early Christians, tome ii, p. 328. Jortin, however, asserts that many of the bishops in the general councils of Ephesus and Chalcedon could not write their names. ("Remarks on Ecclesiast. Hist.," vol. ii, p. 417.)

times acquire by such exercise is more like that worldly shrewdness we see in men whose trade it is to outwit their neighbours than the clear and calm discrimination of philosophy. However this may be, it can not be doubted that the controversies agitated in the Church during these two centuries must have diverted studious minds from profane literature, and narrowed more and more the circle of that knowledge which they were desirous to attain.

The torrent of irrational superstitions which carried all before it in the fifth century, and the progress of ascetic enthusiasm, had an influence still more decidedly inimical to learning. I can not indeed conceive any state of society more adverse to the intellectual improvement of mankind than one which admitted of no middle line between gross dissoluteness and fanatical mortification. An equable tone of public morals, social and humane, verging neither to voluptuousness nor austerity, seems the most adapted to genius, or at least to letters, as it is to individual comfort and national prosperity. After the introduction of monkery and its unsocial theory of duties, the serious and reflecting part of mankind, on whom science most relies, were turned to habits which, in the most favourable view, could not quicken the intellectual energies; and it might be a difficult question whether the cultivators and admirers of useful literature were less likely to be found among the profligate citizens of Rome and their barbarian conquerors or the melancholy recluses of the wilderness.

Such, therefore, was the state of learning before the subversion of the Western Empire. And we may form some notion how little probability there was of its producing any excellent fruits, even if that revolution had never occurred, by considering what took place in Greece during the subsequent ages; where, although there was some attention shown to preserve the best monuments of antiquity, and diligence in compiling from them, yet no one original writer of any superior merit arose, and learning, though plunged but for a short period into mere darkness, may be said to have languished in a middle region of twilight for the greater part of a thousand years.

But not to delay ourselves in this speculation, the final settlement of barbarous nations in Gaul, Spain, and Italy consummated the ruin of literature. Their first irruptions were uniformly attended with devastation; and if some of the Gothic kings, after their establishment, proved humane and civilized sovereigns, yet the nation gloried in its original rudeness, and viewed with no unreasonable disdain arts which had neither preserved their cultivators from corruption nor raised them from servitude. Theodoric, the most famous of the Ostrogoth Kings of Italy, could

not write his name, and is said to have restrained his countrymen from attending those schools of learning by which he, or rather perhaps his minister Cassiodorus, endeavoured to revive the studies of his Italian subjects. Scarcely one of the barbarians, so long as they continued unconfused with the native inhabitants, acquired the slightest tincture of letters; and the praise of equal ignorance was soon aspired to and attained by the entire mass of the Roman laity. They, however, could hardly have divested themselves so completely of all acquaintance with even the elements of learning if the language in which books were written had not ceased to be their natural dialect. This remarkable change in the speech of France, Spain, and Italy is most intimately connected with the extinction of learning, and there is enough of obscurity as well as of interest in the subject to deserve some discussion.

It is obvious, on the most cursory view of the French and Spanish languages, that they, as well as the Italian, are derived from one common source, the Latin. That must, therefore, have been at some period, and certainly not since the establishment of the barbarous nations in Spain and Gaul, substituted in ordinary use for the original dialects of those countries which are generally supposed to have been Celtic, not essentially differing from those which are spoken in Wales and Ireland. Rome, says Augustine, imposed not only her yoke, but her language, upon conquered nations. The success of such an attempt is indeed very remarkable. Though it is the natural effect of conquest, or even of commercial intercourse, to ingraft fresh words and foreign idioms on the stock of the original language, yet the entire disuse of the latter, and adoption of one radically different, scarcely takes place in the lapse of a far longer period than that of the Roman dominion in Gaul. Thus, in part of Brittany the people speak a language which has perhaps sustained no essential alteration from the revolution of two thousand years; and we know how steadily another Celtic dialect has kept its ground in Wales, notwithstanding English laws and government, and the long line of contiguous frontier which brings the natives of that principality into contact with Englishmen. Nor did the Romans ever establish their language (I know not whether they wished to do so) in this island, as we perceive by that stubborn British tongue which has survived two conquests.[4]

[4] Gibbon roundly asserts that "the language of Virgil and Cicero, though with some inevitable mixture of corruption, was so universally adopted in Africa, Spain, Gaul, Great Britain, and Pannonia, that the faint traces of the Punic or Celtic idioms were preserved only in the mountains or among the peasants." ("Decline and Fall," vol. i, p. 60, 8vo edit.) For Britain he quotes Tacitus's "Life of Agricola" as his voucher. But the only passage in this work that gives the least colour to Gibbon's assertion is one in which Agricola is said to have encouraged the children of British chieftains to acquire a taste for liberal studies, and to have succeeded so much by judicious commendation of their abilities,

In Gaul and in Spain, however, they did succeed, as the present state of the French and peninsular languages renders undeniable, though by gradual changes, and not, as the Benedictine authors of the "Histoire Littéraire de la France" seem to imagine, by a sudden and arbitrary innovation.[5] This is neither possible in itself, nor agreeable to the testimony of Irenæus, Bishop of Lyons, at the end of the second century, who laments the necessity of learning Celtic.[6] But although the inhabitants of these provinces came at length to make use of Latin so completely as their mother-tongue that few vestiges of their original Celtic could perhaps be discovered in their common speech, it does not follow that they spoke with the pure pronunciation of Italians, far less with that conformity to the written sounds which we assume to be essential to the expression of Latin words.

It appears to be taken for granted that the Romans pronounced their language as we do at present, so far at least as the enunciation of all the consonants, however we may admit our deviations from the classical standard in propriety of sounds and in measure of time. Yet the example of our own language and of French might show us that orthography may become a very inadequate representative of pronunciation. It is indeed capable of proof that in the purest ages of Latinity some variation existed between these two. Those humerous changes in spelling which distinguish the same words in the poetry of Ennius and of Virgil are best explained by the supposition of their being accommodated to the current pronunciation. Harsh combinations of letters, softened down through delicacy of ear or rapidity of utterance, gradually lost their place in the written language. Thus exfregit and adrogavit assumed a form representing their more liquid sound; and auctor was latterly spelled autor, which has been followed in French and Italian. Autor was probably so pronounced at all times; and the orthography was afterward corrected or corrupted, whichever we please to say, according to the sound. We have the best authority to assert that the final *m* was very faintly pronounced, rather it seems as a rest and short interval between two syllables than an articulate letter; nor, indeed, can we conceive upon what other ground it was subject to elision before a vowel in verse, since we can not suppose that the nice ears of Rome would have submitted to a capricious rule of poetry for which Greece presented no analogy.[7]

ut qui modo linguam Romanam abnuebant, eloquentiam concupiscerent (c. 21). This, it is sufficiently obvious, is very different from the national adoption of Latin as a mother-tongue.

[5] Tome vii, preface.

[6] It appears, by a passage quoted from the digest by M. Bonamy, "Mém. de l'Acad. des Inscriptions," tome xxiv, p. 589, that Celtic was spoken in Gaul, or at least parts of it, as well as Punic in Africa.

[7] Atque eadem illa litera, quoties ultima est, et vocalem verbi sequentis ita

A decisive proof, in my opinion, of the deviation which took place, through the rapidity of ordinary elocution, from the strict laws of enunçiation, may be found in the metre of Terence. His verses, which are absolutely refractory to the common laws of prosody, may be readily scanned by the application of this principle. Thus, in the first act of the "Heautontimorumenos," a part selected at random, I have found: I. Vowels contracted or dropped so as to shorten the word by a syllable; in rei, viâ, diutius, ei, solius, eam, unius, suam, divitias, senex, voluptatem, illius, semel. II. The proceleusmatic foot, or four short syllables, instead of the dactyl; scene i, verses 59, 73, 76, 88, 109; scene ii, verse 36. III. The elision of *s* in words ending with *us* or *is* short, and sometimes even of the whole syllable, before the next word beginning with a vowel; in scene i, verses 30, 81, 98, 101, 116, 119; scene ii, verse 28. IV. The first syllable of *ille* is repeatedly shortened, and indeed nothing is more usual in Terence than this license, whence we may collect how ready this word was for abbreviation into the French and Italian articles. V. The last letter of apud is cut off, scene i, verse 120, and scene ii, verse 8. VI. Hodie is used as a pyrrhichius in scene ii, verse 11. VII. Lastly, there is a clear instance of a short syllable, the antepenultimate of impulerim, lengthened on account of the accent at the one hundred and thirteenth verse of the first scene.

These licenses are in all probability chiefly colloquial, and would not have been adopted in public harangues, to which the precepts of rhetorical writers commonly relate. But if the more elegant language of the Romans, since such we must suppose to have been copied by Terence for his higher characters, differed so much in ordinary discourse from their orthography, it is probable that the vulgar went into much greater deviations. The popular pronunciation errs generally, we might say perhaps invariably, by abbreviation of words, and by liquefying consonants, as is natural to the rapidity of colloquial speech.[8] It is by their knowledge of orthography and etymology that the more educated part of the community is preserved from these corrupt modes of pronunciation. There is always, therefore, a standard by which common speech may be rectified; and in proportion to the dif-

contingit, ut in eam transire possit, etiam si scribitur, tamen parum exprimitur, ut Multum ille, et Quantum erat: adeo ut pene cujusdam novæ literæ sonum reddat. Neque enim eximitur, sed obscuratur, et tantùm aliqua inter duos vocales velut nota est, ne ipsæ coeant. (Quintilian, "Institut.," l. ix, c. 4, p. 585, edit. Capperonier.

[8] The following passage of Quintilian is an evidence both of the omission of harsh or superfluous letters by the best speakers, and of the corrupt abbreviations usual with the worst: Dilucida vero erit pronunciatio primum, si verba tota exegerit, quorum pars devorari, pars destitui solet, plerisque extremas syllabas non proferentibus, dum priorum sono indulgent. Ut est autem necessaria verborum explanatio, ita omnes computare et velut adnumerare literas, molestum et odiosum.—Nam et vocales frequentissime coeunt, et consonantium quædam insequente vocali dissimulantur; utriusque exemplum posuimus; Multum ille et terris. Vitatur etiam duriorum inter se congressus, unde pellexit et collegit, et quæ alio loco dicta sunt, l. ii, c. 3, p. 696.

fusion of knowledge and politeness the deviations from it will be more slight and gradual. But in distant provinces, and especially where the language itself is but of recent introduction, many more changes may be expected to occur. Even in France and England there are provincial dialects, which, if written with all their anomalies of pronunciation as well as idiom, would seem strangely out of unison with the regular language; and in Italy, as is well known, the varieties of dialects are still more striking. Now, in an advancing state of society, and especially with such a vigorous political circulation as we experience in England, language will constantly approximate to uniformity, as provincial expressions are more and more rejected for incorrectness or inelegance. But where literature is on the decline, and public misfortunes contract the circle of those who are solicitous about refinement, as in the last ages of the Roman Empire, there will be no longer any definite standard of living speech, nor any general desire to conform to it if one could be found, and thus the vicious corruptions of the vulgar will entirely predominate. The niceties of ancient idiom will be totally lost, while new idioms will be formed out of violations of grammar sanctioned by usage, which, among a civilized people, would have been proscribed at their appearance.

Such appears to have been the progress of corruption in the Latin language. The adoption of words from the Teutonic dialects of the barbarians, which took place very freely, would not of itself have destroyed the character of that language, though it sullied its purity. The worst law Latin of the middle ages is still Latin, if its barbarous terms have been bent to the regular inflections. It is possible, on the other hand, to write whole pages of Italian, wherein every word shall be of unequivocal Latin derivation, though the character and personality, if I may so say, of the language be entirely dissimilar. But, as I conceive, the loss of literature took away the only check upon arbitrary pronunciation and upon erroneous grammar. Each people innovated through caprice, imitation of their neighbours, or some of those indescribable causes which dispose the organs of different nations to different sounds. The French melted down the middle consonants; the Italians omitted the final. Corruptions arising out of ignorance were mingled with those of pronunciation. It would have been marvellous if illiterate and semi-barbarous provincials had preserved that delicate precision in using the inflections of tenses which our best scholars do not clearly attain. The common speech of any people whose language is highly complicated will be full of solecisms. The French inflections are not comparable in number or delicacy to the Latin, and yet the vulgar confuse their most ordinary forms.

But, in all probability, the variation of these derivative languages from popular Latin has been considerably less than it appears. In the purest ages of Latinity the citizens of Rome itself made use of many terms which we deem barbarous, and of many idioms which we should reject as modern. That highly complicated grammar, which the best writers employed, was too elliptical and obscure, too deficient in the connecting parts of speech, for general use. We can not, indeed, ascertain in what degree the vulgar Latin differed from that of Cicero or Seneca. It would be highly absurd to imagine, as some are said to have done, that modern Italian was spoken at Rome under Augustus.[9] But I believe it may be asserted not only that much the greater part of those words in the present language of Italy which strike us as incapable of a Latin etymology are, in fact, derived from those current in the Augustan age, but that very many phrases which offended nicer ears prevailed in the same vernacular speech, and have passed from thence into the modern French and Italian. Such, for example, was the frequent use of prepositions to indicate a relation between two parts of a sentence which a classical writer would have made to depend on mere inflection.[10]

From the difficulty of retaining a right discrimination of tense seems to have proceeded the active auxiliary verb. It is possible that this was borrowed from the Teutonic languages of the barbarians, and accommodated both by them and by the natives to words of Latin origin. The passive auxiliary is obtained by a very ready resolution of any tense in that mood, and has not been altogether dispensed with even in Greek, while in Latin it is used much more frequently. It is not quite so easy to perceive the propriety of the active habeo or teneo, one or both of which all modern languages have adopted as their auxiliaries in conjugating the verb. But in some instances this analysis is not improper; and it may be supposed that nations, careless of etymology or correctness, applied the same verb by a rude analogy to cases where it ought not strictly to have been employed.[11]

Next to the changes founded on pronunciation and to the substitution of auxiliary verbs for inflections, the usage of the definite and indefinite articles in nouns appears the most con-

[9] Tiraboschi ("Storia dell. Lett. Ital.," tome iii, preface, p. v) imputes this paradox to Bembo and Quadrio; but I can hardly believe that either of them could maintain it in a literal sense.

[10] M. Bonamy, in an essay printed in "Mém. de l'Académie des Inscriptions," tome xxiv, has produced several proofs of this from the classical writers on agriculture and other arts, though some of his instances are not in point, as any schoolboy would have told him. This essay, which by some accident had escaped my notice till I had nearly finished the observations in my text, contains, I think, the best view that I have seen of the process of transition by which Latin was changed into French and Italian. Add, however, the preface to Tiraboschi's third volume and the thirty-second dissertation of Muratori.

[11] See Lanzi, "Saggio della Lingua Etrusca," tome i, c. 431; "Mém. de l'Acad. des Inscrip.," tome xxiv, p. 632.

siderable step in the transmutation of Latin into its derivative languages. None but Latin, I believe, has ever wanted this part of speech; and the defect to which custom reconciled the Romans would be an insuperable stumbling-block to nations who were to translate their original idiom into that language. A coarse expedient of applying *unus*, *ipse*, or *ille* to the purposes of an article might perhaps be no unfrequent vulgarism of the provincials; and after the Teutonic tribes brought in their own grammar, it was natural that a corruption should become universal, which in fact supplied a real and essential deficiency.

That the quantity of Latin syllables is neglected, or rather lost, in modern pronunciation, seems to be generally admitted. Whether, indeed, the ancient Romans, in their ordinary speaking, distinguished the measure of syllables with such uniform musical accuracy as we imagine, giving a certain time to those termed long, and exactly half that duration to the short, might very reasonably be questioned; though this was probably done, or attempted to be done, by every reader of poetry. Certainly, however, the laws of quantity were forgotten, and an accentual pronunciation came to predominate, before Latin had ceased to be a living language. A Christian writer named Commodianus, who lived before the end of the third century according to some, or, as others think, in the reign of Constantine, has left us a philological curiosity, in a series of attacks on the pagan superstitions, composed in what are meant to be verses, regulated by accent instead of quantity, exactly as we read Virgil at present.[12]

It is not improbable that Commodianus may have written in Africa, the province in which more than any the purity of Latin was debased. At the end of the fourth century St. Augustine assailed his old enemies, the Donatists, with nearly the same arms

[12] No description can give so adequate a notion of this extraordinary performance as a short specimen. Take the introductory lines, which really, prejudices of education apart, are by no means inharmonious:

"Præfatio nostra viam erranti demonstrat,
Respectumque bonum, cum venerit sæculi meta,
Æternum fieri, quod discredunt inscia corda.
Ego similiter erravi tempore multo,
Fana prosequendo, parentibus insciis ipsis.
Abstuli me tandem inde, legendo de lege.
Testificor Dominum, doleo, proh! civica turba
Inscia quod perdit, pergens deos quærere vanos.
Ob ea perdoctus ignoros instruo verum."

Commodianus, however, did not keep up this excellence in every part. Some of his lines are not reducible to any pronunciation, without the summary rules of Procustes; as, for instance—

Paratus ad epulas, et refugiscere præcepta: or, Capillos inficitis, oculos fuligine relinitis.

It must be owned that this text is exceedingly corrupt, and I should not despair of seeing a truly critical editor, unscrupulous as his fraternity are apt to be, improve his lines into unblemished hexameters. Till this time arrives, however, we must consider him either as utterly ignorant of metrical distinctions, or at least as aware that the populace whom he addressed did not observe them in speaking. Commodianus is published by Dawes at the end of his edition of Minucius Felix. Some specimens are quoted in Harris's "Philological Inquiries."

that Commodianus had wielded against heathenism. But as the refined and various music of hexameters was unlikely to be relished by the vulgar, he prudently adopted a different measure.[13] All the nations of Europe seem to love the trochaic verse; it was frequent on the Greek and Roman stage; it is more common than any other in the popular poetry of modern languages. This proceeds from its simplicity, its liveliness, and its ready accommodation to dancing and music. In St. Augustine's poem he united to a trochaic measure the novel attraction of rhyme.

As Africa must have lost all regard to the rules of measure in the fourth century, so it appears that Gaul was not more correct in the next two ages. A poem addressed by Auspicius, Bishop of Toul, to Count Arbogastes, of earlier date probably than the invasion of Clovis, is written with no regard to quantity.[14] The bishop by whom this was composed is mentioned by his contemporaries as a man of learning. Probably he did not choose to perplex the barbarian to whom he was writing (for Arbogastes is plainly a barbarous name) by legitimate Roman metre. In the next century Gregory of Tours informs us that Chilperic attempted to write Latin verses; but the lines could not be reconciled to any division of feet, his ignorance having confounded long and short syllables together.[15] Now Chilperic must have learned to speak Latin like other kings of the Franks, and was a smatterer in several kinds of literature. If Chilperic, therefore, was not master of these distinctions, we may conclude that the bishops and other Romans with whom he conversed did not observe them; and that his blunders in versification arose from ignorance of rules, which, however fit to be preserved in poetry, were entirely obsolete in the living Latin of his age. Indeed, the frequency of false quantities in the poets even of the fifth, but much more of the sixth century, is palpable. Fortunatus is quite full of them. This seems a decisive proof that the ancient pronunciation was lost. Avitus tells us that few preserved the proper measure of syllables in singing. Yet he was

[13] "Archæologia," vol. xiv, p. 188. The following are the first lines:

"Abundantia peccatorum solet fratres conturbare;
Propter hoc Dominus noster voluit nos præmonere,
Comparans regnum cœlorum reticulo misso in mare,
Congreganti multos pisces, omne genus hinc et inde,
Quos cum traxissent ad littus, tunc cœperunt separare,
Bonos in vasa miserunt, reliquos malos in mare."

This trash is much below the level of Augustine, but it could not have been later than his age.

[14] "Recueil des Historiens," tome i, p. 814; it begins in the following manner:

"Præcelso expectabili his Arbogasto comiti
Auspicius, qui diligo, salutem dico plurimam.
Magnas cœlesti Domino rependo corde gratias
Quod te Tullensi proxime magnum in urbe vidimus.
Multis me tuis artibus lætificabas antea,
Sed nunc fecisti maximo me exultare gaudio."

[15] Chilpericus rex . . . confecit duos libros, quorum versiculi debiles nullis pedibus subsistere possunt: in quibus, dum non intelligebat, pro longis syllabas breves posuit, et pro brevibus longas statuebat (l. vi, c. 46).

Bishop of Vienne, where a purer pronunciation might be expected than in the remoter parts of Gaul.[16]

Defective, however, as it had become in respect of pronunciation, Latin was still spoken in France during the sixth and seventh centuries. We have compositions of that time, intended for the people, in grammatical language. A song is still extant in rhyme and loose accentual measure, written upon a victory of Clotaire II over the Saxons in 622, and obviously intended for circulation among the people.[17] Fortunatus says, in his "Life of St. Aubin of Angers," that he should take care not to use any expression unintelligible to the people.[18] Baudemind, in the middle of the seventh century, declares, in his "Life of St. Amand," that he writes in a rustic and vulgar style, that the reader may be excited to imitation.[19] Not that these legends were actually perused by the populace, for the very art of reading was confined to a few. But they were read publicly in the churches, and probably with a pronunciation accommodated to the corruptions of ordinary language. Still, the Latin syntax must have been tolerably understood; and we may therefore say that Latin had not ceased to be a living language, in Gaul at least, before the latter part of the seventh century. Faults, indeed, against the rules of grammar, as well as unusual idioms, perpetually occur in the best writers of the Merovingian period, such as Gregory of Tours, while charters drawn up by less expert scholars deviate much further from purity.[20]

The corrupt provincial idiom became gradually more and more dissimilar to grammatical Latin; and the lingua Romana rustica, as the vulgar patois (to borrow a word that I can not well translate) has been called, acquired a distinct character as a new language in the eighth century.[21] Latin orthography, which had been hitherto pretty well maintained in books, though not always in charters, gave way to a new spelling, conformably to the current pronunciation. Thus we find lui, for illius, in the "Formularies" of Marculfus; and Tu lo juva in a liturgy of Charlemagne's age for Tu illum juva. When this barrier was once broken down, such a deluge of innovation poured in that

[16] "Mém. de l'Académie des Inscriptions," tome xvii; "Hist. Littéraire de la France," tome ii, p. 28. It seems rather probable that the poetry of Avitus belongs to the fifth century, though not very far from its termination. He was the correspondent of Sidonius Apollinaris, who died in 489, and we may presume his poetry to have been written rather early in life.

[17] One stanza of this song will suffice to show that the Latin language was yet unchanged:

"De Clotario est canere rege Francorum,
Qui ivi pugnare cum gente Saxonum,
Quam graviter provenisset missis Saxonum,
Si non fuisset inclitus Faro de gente Burgundionum."

[18] Præcavendum est, ne ad aures populi minus aliquid intelligibile proferatur. ("Mém. de l'Acad.," tome xvii, p. 712.

[19] Rustico et plebeio sermone propter exemplum et imitationem. (Id., ibid.)

[20] "Hist. Littéraire de la France," tome iii, p. 5; "Mém. de l'Académie," tome xxiv, p. 617; "Nouveau Traité de Diplomatique," tome iv, p. 485.

[21] "Hist. Littéraire de la France,"

all the characteristics of Latin were effaced in writing as well as speaking, and the existence of a new language became undeniable. In a council held at Tours in 813 the bishops are ordered to have certain homilies of the fathers translated into the rustic Roman, as well as the German tongue.[22] After this it is unnecessary to multiply proofs of the change which Latin had undergone.

In Italy the progressive corruptions of the Latin language were analogous to those which occurred in France, though we do not find in writings any unequivocal specimens of a new formation at so early a period. But the old inscriptions, even of the fourth and fifth centuries, are full of solecisms and corrupt orthography. In legal instruments under the Lombard kings the Latin inflections are indeed used, but with so little regard to propriety that it is obvious the writers had not the slightest tincture of grammatical knowledge. This observation extends to a very large proportion of such documents down to the twelfth century, and is as applicable to France and Spain as it is to Italy. In these charters the peculiar characteristics of Italian orthography and grammar frequently appear. Thus we find, in the eighth century, diveatis for debeatis, da for de in the ablative, avendi for habendi, dava for dabat, cedo a deo, and ad ecclesia, among many similar corruptions.[23] Latin was so changed, it is said by a writer of Charlemagne's age, that scarcely any part of it was popularly known. Italy, indeed, had suffered more than France itself by invasion, and was reduced to a lower state of barbarism, though probably, from the greater distinctness of pronunciation habitual to the Italians, they lost less of their original language than the French. I do not find, however, in the writers who have treated this subject, any express evidence of a vulgar language distinct from Latin earlier than the close of the tenth century, when it is said in the epitaph of Pope Gregory V, who died in 999, that he instructed the people in three dialects—the Frankish or German, the vulgar, and the Latin.[24]

When Latin had thus ceased to be a living language, the whole treasury of knowledge was locked up from the eyes of the people. The few who might have imbibed a taste for literature, if books had been accessible to them, were reduced to abandon pursuits that could only be cultivated through a kind of

tome vii, p. 12. The editors say that it is mentioned by name even in the seventh century, which is very natural, as the corruption of Latin had then become striking. It is familiarly known that illiterate persons understand a more correct language than they use themselves; so that the corruption of Latin might have gone to a considerable length among the people, while sermons were preached, and tolerably comprehended, in a purer grammar.

[22] "Mém. de l'Acad. des Insc.," tome xvii. See two memoirs in this volume by Du Clos and Le Bœuf, especially the latter, as well as that already mentioned in tome xxiv, p. 582, by M. Bonamy.

[23] Muratori, "Dissert.," i and xliii.

[24] "Usus Franciscâ, vulgari, et voce Latinâ.
Instituit populos eloquio tripici."
("Fontanini dell' Eloquenza Italiana," p. 15; Muratori, "Dissert.," xxxii.)

education not easily within their reach. Schools, confined to cathedrals and monasteries, and exclusively designed for the purposes of religion, afforded no encouragement or opportunities to the laity.[25] The worst effect was that, as the newly formed languages were hardly made use of in writing, Latin being still preserved in all legal instruments and public correspondence, the very use of letters, as well as of books, was forgotten. For many centuries, to sum up the account of ignorance in a word, it was rare for a layman, of whatever rank, to know how to sign his name.[26] Their charters, till the use of seals became general, were subscribed with the mark of the cross. Still more extraordinary it was to find one who had any tincture of learning. Even admitting every indistinct commendation of a monkish biographer (with whom a knowledge of church music would pass for literature[27]), we could make out a very short list of scholars. None certainly were more distinguished as such than Charlemagne and Alfred. But the former, unless we reject a very plain testimony, was incapable of writing;[28] and Alfred found difficulty in making a translation from the pastoral instruction of St. Gregory, on account of his imperfect knowledge of Latin.[29]

Whatever mention, therefore, we find of learning and the learned during these dark ages must be understood to relate only

[25] "Histoire Littéraire de la France," tome vi, p. 20; Muratori, "Dissert.," xliii.

[26] "Nouveau Traité de Diplomatique," tome ii, p. 419. This became, the editors say, much less unusual about the end of the thirteenth century; a pretty late period! A few signatures to deeds appear in the fourteenth century; in the next they are more frequent. (Ibid.) The Emperor Frederick Barbarossa could not read (Struvius, "Corpus Hist. German.," tome i, p. 377), nor John, King of Bohemia, in the middle of the fourteenth century (Sismondi, tome v, p. 205), nor Philip the Hardy, King of France, although the son of St. Louis. (Velly, tome vi, p. 426.)

[27] Louis IV, King of France, laughing at Fulk, Count of Anjou, who sang anthems among the choristers of Tours, received the following pithy epistle from his learned vassal: "Noveritis, domines quod rex illiteratus est asinus coronatus." ("Gesta Comitum Andegavensium.") In the same book, Geoffrey, father of our Henry II, is said to be optime literatus, which perhaps imports little more learning than his ancestor Fulk possessed.

[28] The passage in Eginhard, which has occasioned so much dispute, speaks for itself: Tentabat et scribere, tabulasque et codicillos ad hoc in lecticula sub cervicalibus circumferre solebat, ut, cum vacuum tempus esset, manum effigiandis literis assuefaceret; sed parum prosperè successit labor præposterus ac serò inchoatus.

Many are still unwilling to believe that Charlemagne could not write. M. Ampère observes that the emperor asserts himself to have been the author of the Libri Carolini, and is said by some to have composed verses. ("Hist. Litt. de la France," iii, 37.) But did not Henry VIII claim a book against Luther, which was not written by himself? Qui facit per alium, facit per se, is in all cases a royal prerogative. Even if the book were Charlemagne's own, might he not have dictated it? I have been informed that there is a manuscript at Vienna with autograph notes of Charlemagne in the margin. But is there sufficient evidence of their genuineness? The great difficulty is to get over the words which I have quoted from Eginhard. M. Ampère ingeniously conjectures that the passage does not relate to simple common writing, but to calligraphy; the art of delineating characters in a beautiful manner, practised by the copyists, and of which a contemporaneous specimen may be seen in the well-known Bible of the British Museum. Yet it must be remembered that Charlemagne's early life passed in the depths of ignorance; and Eginhard gives a fair reason why he failed in acquiring the art of writing, that he began too late. Fingers of fifty are not made for a new skill. It is not, of course, implied by the words that he could not write his own name; but that he did not acquire such a facility as he desired. (1848.)

[29] Spelman, "Vit. Alfred," Append.

to such as were within the pale of clergy, which indeed was pretty extensive, and comprehended many who did not exercise the offices of religious ministry. But even the clergy were, for a long period, not very materially superior, as a body, to the uninstructed laity. A cloud of ignorance overspread the whole face of the Church, hardly broken by a few glimmering lights, who owe much of their distinction to the surrounding darkness. In the sixth century the best writers in Latin were scarcely read;[30] and perhaps from the middle of this age to the eleventh there was, in a general view of literature, little difference to be discerned. If we look more accurately, there will appear certain gradual shades of twilight on each side of the greatest obscurity. France reached her lowest point about the beginning of the eighth century; but England was at that time more respectable, and did not fall into complete degradation till the middle of the ninth. There could be nothing more deplorable than the state of letters in Italy and in England during the succeeding century; but France can not be denied to have been uniformly, though very slowly, progressive from the time of Charlemagne.[31]

Of this prevailing ignorance it is easy to produce abundant testimony. Contracts were made verbally, for want of notaries capable of drawing up charters; and these, when written, were frequently barbarous and ungrammatical to an incredible degree. For some considerable intervals scarcely any monument of literature has been preserved, except a few jejune chronicles, the vilest legends of saints, or verses equally destitute of spirit and metre. In almost every council the ignorance of the clergy forms a subject for reproach. It is asserted by one held in 992 that scarcely a single person was to be found in Rome itself who knew the first elements of letters.[32] Not one priest of a thousand in Spain, about the age of Charlemagne, could address a common letter of salutation to another.[33] In England, Alfred declares that he could not recollect a single priest south of the Thames (the most civilized part of England), at the time of his accession, who understood the ordinary prayers or could translate Latin into his

[30] "Hist. Littéraire de la France," tome iii, p. 5.

[31] These four dark centuries — the eighth, ninth, tenth, and eleventh — occupy five large quarto volumes of the "Literary History of France," by the fathers of St. Maur. But the most useful part will be found in the general view at the commencement of each volume; the remainder is taken up with biographies, into which a reader may dive at random, and sometimes bring up a curious fact. I may refer also to the fourteenth volume of Leber, "Collections Relatives à l'Histoire de France, where some learned dissertations by the Abbés Lebeuf and Goujet, a little before the middle of the last century, are reprinted. [Note I.]

Tiraboschi, "Storia della Letteratura," tome iii, and Muratori's forty-third Dissertation, are good authorities for the condition of letters in Italy; but I can not easily give references to all the books which I have consulted.

[32] Tiraboschi, tome iii, p. 198.

[33] Mabillon, "De Re Diplomaticâ," p. 55. The reason alleged, indeed, is that they were wholly occupied with studying Arabic, in order to carry on a controversy with the Saracens. But, as this is not very credible, we may rest with the main fact that they could write no Latin.

mother-tongue.[34] Nor was this better in the time of Dunstan, when, it is said, none of the clergy knew how to write or translate a Latin letter.[35] The homilies which they preached were compiled for their use by some bishops from former works of the same kind, or the writings of the fathers.

This universal ignorance was rendered unavoidable, among other causes, by the scarcity of books, which could only be procured at an immense price. From the conquest of Alexandria by the Saracens at the beginning of the seventh century, when the Egyptian papyrus almost ceased to be imported into Europe, to the close of the eleventh, about which time the art of making paper from cotton rags seems to have been introduced, there were no materials for writing except parchment, a substance too expensive to be readily spared for mere purposes of literature.[36] Hence an unfortunate practice gained ground of erasing a manuscript in order to substitute another on the same skin. This occasioned the loss of many ancient authors, who have made way for the legends of saints or other ecclesiastical rubbish.

If we would listen to some literary historians, we should believe that the darkest ages contained many individuals, not only distinguished among their contemporaries, but positively eminent for abilities and knowledge. A proneness to extol every

[34] Spelman, "Vit. Alfred," Append. The whole drift of Alfred's preface to this translation is to defend the expediency of rendering books into English, on account of the general ignorance of Latin. The zeal which this excellent prince shows for literature is delightful. Let us endeavour, he says, that all the English youth, especially the children of those who are free-born, and can educate them, may learn to read English before they take to any employment. Afterward such as please may be instructed in Latin. Before the Danish invasion, indeed, he tells us, churches were well furnished with books; but the priests got little good from them, being written in a foreign language which they could not understand.

[35] Mabillon, "De Re Diplomaticâ," p. 55. Ordericus Vitalis, a more candid judge of our unfortunate ancestors than other contemporary annalists, says that the English were, at the Conquest, rude and almost illiterate, which he ascribes to the Danish invasion. (Du Chesne, "Hist. Nort. Script.," p. 518.) However, Ingulfus tells us that the library of Croyland contained above three hundred volumes, till the unfortunate fire that destroyed that abbey in 1091. (Gale, XV "Scriptores," tome i, 93. Such a library was very extraordinary in the eleventh century, and could not have been equalled for some ages afterward. Ingulfus mentions at the same time a nadir, as he calls it, or planetarium, executed in various metals. This had been presented to Abbot Turketul in the tenth century by a King of France, and was, I make no doubt, of Arabian or Greek manufacture.

[36] Parchment was so scarce that none could be procured about 1120 for an illuminated copy of the Bible. (Warton's "Hist. of English Poetry, Dissert. II.") I suppose the deficiency was of skins beautiful enough for this purpose; it can not be meant that there was no parchment for legal instruments.

Manuscripts written on papyrus, as may be supposed from the fragility of the material, as well as the difficulty of procuring it, are of extreme rarity. That in the British Museum, being a charter to a church at Ravenna in 572, is in every respect the most curious; and, indeed, both Mabillon and Muratori seem never to have seen anything written on papyrus, though they trace its occasional use down to the eleventh or twelfth centuries. (Mabillon, "De Re Diplomaticâ," l. ii; Muratori, "Antichità Italiane," Dissert. xliii, p. 602.) But the authors of the "Nouveau Traité de Diplomatique" speak of several manuscripts on this material as extant in France and Italy (tome i, p. 493).

As to the general scarcity and high price of books in the middle ages, Robertson (Introduction to "Hist. Charles V," note x), and Warton in the above-cited dissertation, not to quote authors less accessible, have collected some of the leading facts, to whom I refer the reader.

monk of whose production a few letters or a devotional treatise survives, every bishop of whom it is related that he composed homilies, runs through the laborious work of the Benedictines of St. Maur, the "Literary History of France," and, in a less degree, is observable even in Tiraboschi, and in most books of this class. Bede, Alcuin, Hincmar, Raban, and a number of inferior names, become real giants of learning in their uncritical panegyrics. But one might justly say that ignorance is the smallest defect of the writers of these dark ages. Several of them were tolerably acquainted with books, but that wherein they are uniformly deficient is original argument or expression. Almost every one is a compiler of scraps from the fathers, or from such semi-classical authors as Boethius, Cassiodorus, or Martianus Capella.[37] Indeed, I am not aware that there appeared more than two really considerable men in the republic of letters from the sixth to the middle of the eleventh century—John, surnamed Scotus or Erigena, a native of Ireland; and Gerbert, who became Pope by the name of Silvester II: the first endowed with a bold and acute metaphysical genius; the second excellent, for the time when he lived, in mathematical science and mechanical inventions.[38]

If it be demanded by what cause it happened that a few sparks of ancient learning survived throughout this long winter, we can only ascribe their preservation to the establishment of Chris-

[37] Lest I should seem to have spoken too peremptorily, I wish it to be understood that I pretend to hardly any direct acquaintance with these writers, and found my censure on the authority of others, chiefly, indeed, on the admissions of those who are too disposed to fall into a strain of panegyric. (See "Histoire Littéraire de la France," tome iv, p. 281 et alibi.

[38] John Scotus, who, it is almost needless to say, must not be confounded with the still more famous metaphysician Duns Scotus, lived under Charles the Bald, in the middle of the ninth century. It admits of no doubt that John Scotus was, in a literary and philosophical sense, the most remarkable man of the dark ages; no one else had his boldness, his subtlety in threading the labyrinths of metaphysical speculations which, in the west of Europe, had been utterly disregarded. But it is another question whether he can be reckoned an original writer; those who have attended most to his treatise "De Divisione Naturæ," the most abstruse of his works, consider it as the development of an Oriental philosophy, acquired during his residence in Greece, and nearly coinciding with some of the later Platonism of the Alexandrian school, but with a more unequivocal tendency to pantheism. This manifests itself in some extracts which have latterly been made from the treatise "De Divisione Naturæ"; but though Scotus had not the reputation of unblemished orthodoxy, the drift of his philosophy was not understood in that barbarous period. He might, indeed, have excited censure by his intrepid preference of reason to authority. "Authority," he says, "springs from reason, not reason from authority—true reason needs not be confirmed by any authority." La véritable importance historique, says Ampère, de Scot Erigène n'est donc pas dans ses opinions; celles-ci n'ont d'autre intérêt que leur date et le lieu où elles apparaissent. Sans doute, il est piquant et bizarre de voir ces opinions orientales et alexandrines surgir au IXe siècle, à Paris, à la cour de Charles le Chauve; mais ce qui n'est pas seulement piquant et bizarre, ce qui intéresse le développement de l'esprit humain, c'est que la question ait été posée, dès lors, si nettement entre l'autorité et la raison, et si énergiquement résolue en faveur de la seconde. En un mot, par ses idées, Scot Erigène est encore un philosophe de l'antiquité Grecque; et par l'independance hautement accusée de son point de vue philosophique, il est déjà un dévancier de la philosophie moderne. ("Hist. Litt.," iii, 146.

Silvester II died in 1003. Whether he first brought the Arabic numeration into Europe, as has been commonly said, seems uncertain; it was at least not much practised for some centuries after his death.

tianity. Religion alone made a bridge, as it were, across the chaos, and has linked the two periods of ancient and modern civilization. Without this connecting principle, Europe might indeed have awakened to intellectual pursuits, and the genius of recent times needed not to be invigorated by the imitation of antiquity. But the memory of Greece and Rome would have been feebly preserved by tradition, and the monuments of those nations might have excited, on the return of civilization, that vague sentiment of speculation and wonder with which men now contemplate Persepolis or the Pyramids. It is not, however, from religion simply that we have derived this advantage, but from religion as it was modified in the dark ages. Such is the complex reciprocation of good and evil in the dispensations of Providence that we may assert, with only an apparent paradox, that, had religion been more pure, it would have been less permanent, and that Christianity has been preserved by means of its corruptions. The sole hope for literature depended on the Latin language; and I do not see why that should not have been lost, if three circumstances in the prevailing religious system, all of which we are justly accustomed to disapprove, had not conspired to maintain it—the papal supremacy, the monastic institutions, and the use of a Latin liturgy. 1. A continual intercourse was kept up, in consequence of the first, between Rome and the several nations of Europe; her laws were received by the bishops, her legates presided in councils; so that a common language was as necessary in the Church as it is at present in the diplomatic relations of kingdoms. 2. Throughout the whole course of the middle ages there was no learning, and very little regularity of manners, among the parochial clergy. Almost every distinguished man was either the member of a chapter or of a convent. The monasteries were subjected to strict rules of discipline, and held out, at the worst, more opportunities for study than the secular clergy possessed, and fewer for worldly dissipations. But their most important service was as secure repositories for books. All our manuscripts have been preserved in this manner, and could hardly have descended to us by any other channel; at least there were intervals when I do not conceive that any royal or private libraries existed.[39] 3. Monasteries, however, would prob-

[39] Charlemagne had a library at Aix-la-Chapelle, which he directed to be sold at his death for the benefit of the poor. His son Louis is said to have collected some books. But this rather confirms, on the whole, my supposition that, in some periods, no royal or private libraries existed, since there were not always princes or nobles with the spirit of Charlemagne, or even Louis the Debonair.

"We possess a catalogue," says M. Ampère (quoting d'Achery's "Spicilegium," ii. 310), "of the library in the abbey of St. Riquier, written in 831; it consists of 256 volumes, some containing several works. Christian writers are in great majority; but we find also the 'Eclogues' of Virgil, the 'Rhetoric' of Cicero, the 'History' of Homer, that is, the works ascribed to Dictys and Dares." (Ampère, iii. 236.) Can anything be lower than this, if nothing is omitted more valuable than what is mentioned? The

ably have contributed very little toward the preservation of learning if the Scriptures and the liturgy had been translated out of Latin when that language ceased to be intelligible. Every rational principle of religious worship called for such a change, but it would have been made at the expense of posterity. One might presume, if such refined conjectures were consistent with historical caution, that the more learned and sagacious ecclesiastics of those times, deploring the gradual corruption of the Latin tongue, and the danger of its absolute extinction, were induced to maintain it as a sacred language, and the depository, as it were, of that truth and that science which would be lost in the barbarous dialects of the vulgar. But a simpler explanation is found in the radical dislike of innovation which is natural to an established clergy. Nor did they want as good pretexts, on the ground of convenience, as are commonly alleged by the opponents of reform. They were habituated to the Latin words of the church service, which had become, by this association, the readiest instruments of devotion, and with the majesty of which the Romance jargon could bear no comparison. Their musical chants were adapted to these sounds, and their hymns depended, for metrical effect, on the marked accents and powerful rhymes which the Latin language affords. The vulgate Latin of the Bible was still more venerable. It was like a copy of a lost original; and a copy attested by one of the most eminent fathers, and by the general consent of the Church. These are certainly no adequate excuses for keeping the people in ignorance; and the gross corruption of the middle ages is in a great degree assignable to this policy. But learning, and consequently religion, have eventually derived from it the utmost advantage.

In the shadows of this universal ignorance a thousand superstitions, like foul animals of night, were propagated and nourished. It would be very unsatisfactory to exhibit a few specimens of this odious brood when the real character of those times is only to be judged by their accumulated multitude. In every age it would be easy to select proofs of irrational superstition, which, separately considered, seem to degrade mankind from its level in the creation; and perhaps the contemporaries of Swedenborg and Southcote have no right to look very contemptuously upon the fanaticism of their ancestors. There are many books

"Rhetoric" of Cicero was probably the spurious books Ad Herennium. But other libraries must have been somewhat better furnished than this; else the Latin authors would have been still less known in the ninth century than they actually were.

In the gradual progress of learning, a very small number of princes thought it honourable to collect books. Perhaps no earlier instance can be mentioned than that of a most respectable man, William III, Duke of Guienne, in the first part of the eleventh century. Fuit dux iste, says a contemporary writer, a pueritia doctus literis, et satis notitiam Scripturarum habuit; librorum copiam in palatio suo servavit; et si forte a frequentia causarum et tumultu vacaret, lectioni per seipsum operam dabat longioribus noctibus elucubrans in libris, donec somno vinceretur. ("Rec. des Hist.," x, 155.)

from which a sufficient number of instances may be collected to show the absurdity and ignorance of the middle ages in this respect. I shall only mention two as affording more general evidence than any local or obscure superstition. In the tenth century an opinion prevailed everywhere that the end of the world was approaching. Many charters begin with these words, "As the world is now drawing to its close." An army marching under the Emperor Otho I was so terrified by an eclipse of the sun, which it conceived to announce this consummation, as to disperse hastily on all sides. As this notion seems to have been founded on some confused theory of the millennium, it naturally died away when the seasons proceeded in the eleventh century with their usual regularity.[40] A far more remarkable and permanent superstition was the appeal to Heaven in judicial controversies, whether through the means of combat or of ordeal. The principle of these was the same; but in the former it was mingled with feelings independent of religion—the natural dictates of resentment in a brave man unjustly accused, and the sympathy of a warlike people with the display of skill and intrepidity. These, in course of time, almost obliterated the primary character of judicial combat, and ultimately changed it into the modern duel, in which assuredly there is no mixture of superstition.[41] But, in the various tests of innocence which were called ordeals, this stood undisguised and unqualified. It is not necessary to describe what is so well known—the ceremonies of trial by handling hot iron, by plunging the arm into boiling fluids, by floating or sinking in cold water, or by swallowing a piece of consecrated bread. It is observable that, as the interference of Heaven was relied upon as a matter of course, it seems to have been reckoned nearly indifferent whether such a test was adopted as must, humanly considered, absolve all the guilty, or one that must convict all the innocent. The ordeals of hot iron or water were, however, more commonly used; and it has been a perplexing question by what dexterity these tremendous proofs were eluded. They seem at least to have placed the decision of all judicial controversies in the hands of the clergy, who must have

[40] Robertson, Introduction to "Hist. Charles V," note 13; Schmidt, "Hist. des Allemands," tome ii, p. 380; "Hist. Littéraire de la France," tome vi.

[41] Duelling, in the modern sense of the word, exclusive of casual frays and single combat during war, was unknown before the sixteenth century. But we find one anecdote which seems to illustrate its derivation from the judicial combat. The Dukes of Lancaster and Brunswick, having some differences, agreed to decide them by duel before John, King of France. The lists were prepared with the solemnity of a real trial by battle; but the king interfered to prevent the engagement. (Villaret, tome ix, p. 71.) The barbarous practice of wearing swords as a part of domestic dress, which tended very much to the frequency of duelling, was not introduced till the latter part of the fifteenth century. I can only find one print in Montfaucon's Monuments of the French monarchy where a sword is worn without armour before the reign of Charles VIII; though a few, as early as the reign of Charles VI, have short daggers in their girdles. The exception is a figure of Charles VII, tome iii, pl. 47.

known the secret, whatever that might be, of satisfying the spectators that an accused person had held a mass of burning iron with impunity. For several centuries this mode of investigation was in great repute, though not without opposition from some eminent bishops. It does discredit to the memory of Charlemagne that he was one of its warmest advocates.[42] But the judicial combat, which indeed might be reckoned one species of ordeal, gradually put an end to the rest; and as the Church acquired better notions of law, and a code of her own, she strenuously exerted herself against all these barbarous superstitions.[43]

But the religious ignorance of the middle ages sometimes burst out in ebullitions of epidemical enthusiasm, more remarkable than these superstitious usages, though proceeding in fact from similar causes. For enthusiasm is little else than superstition put in motion, and is equally founded on a strong conviction of supernatural agency, without any just conceptions of its nature. Nor has any denomination of Christians produced, or even sanctioned, more fanaticism than the Church of Rome. These epidemical frenzies, however, to which I am alluding, were merely tumultuous, though certainly fostered by the creed of perpetual miracles which the clergy inculcated, and drawing a legitimate precedent for religious insurrection from the crusades. For these, among other evil consequences, seem to have principally excited a wild fanaticism that did not sleep for several centuries.[44]

[42] "Baluzii Capitularia," p. 444. It was prohibited by Louis the Debonair; a man, as I have noticed in another place, not inferior, as a legislator, to his father. (Ibid., p. 668.) "The spirit of party," says a late writer, "has often accused the Church of having devised these barbarous methods of discovering truth—the duel and the ordeal; nothing can be more unjust. Neither one nor the other is derived from Christianity; they existed long before in the Germanic usages." (Ampère, "Hist. Litt. de la France," iii, 180.) Any one must have been very ignorant who attributed the invention of ordeals to the Church. But during the dark ages they were always sanctioned. Agobard, from whom M. Ampère gives a quotation, in the reign of Louis the Debonair wrote strongly against them; but this was the remonstrance of a superior man in an age that was ill inclined to hear him.

[43] Ordeals were not actually abolished in France, notwithstanding the law of Louis above mentioned, so late as the eleventh century (Bouquet, tome xi, p. 430), nor in England till the reign of Henry III. Some of the stories we read, wherein accused persons have passed triumphantly through these severe proofs, are perplexing enough; and perhaps it is safer, as well as easier, to deny than to explain them. For example, a writer in the "Archæologia" (vol. xv, p. 172) has shown that Emma, queen of Edward the Confessor, did not perform her trial by stepping between, as Blackstone imagines, but upon nine red-hot ploughshares. But he seems not aware that the whole story is unsupported by any contemporary or even respectable testimony. A similar anecdote is related of Cunegunda, wife of the Emperor Henry II, which probably gave rise to that of Emma. There are, however, medicaments, as is well known, that protect the skin to a certain degree against the effect of fire. This phenomenon would pass for miraculous, and form the basis of those exaggerated stories in monkish books.

[44] The most singular effect of this crusading spirit was witnessed in 1211, when a multitude, amounting, as some say, to 90,000, chiefly composed of children, and commanded by a child, set out for the purpose of recovering the Holy Land. They came for the most part from Germany, and reached Genoa without harm. But, finding there an obstacle which their imperfect knowledge of geography had not anticipated, they soon dispersed in various directions. Thirty thousand arrived at Marseilles, where part were murdered, part probably starved, and the rest sold to the Saracens. (Annali di Muratori, A. D. 1211; Velly, "Hist. de France," tome iv, p. 206.)

The first conspicuous appearance of it was in the reign of Philip Augustus, when the mercenary troops, dismissed from the pay of that prince and of Henry II, committed the greatest outrages in the south of France. One Durand, a carpenter, deluded, it is said, by a contrived appearance of the Virgin, put himself at the head of an army of the populace, in order to destroy these marauders. His followers were styled Brethren of the White Caps, from the linen coverings of their heads. They bound themselves not to play at dice nor frequent taverns, to wear no affected clothing, to avoid perjury and vain swearing. After some successes over the plunderers, they went so far as to forbid the lords to take any dues from their vassals, on pain of incurring the indignation of the brotherhood. It may easily be imagined that they were soon entirely discomfited, so that no one dared to own that he had belonged to them.[45]

During the captivity of St. Louis in Egypt, a more extensive and terrible ferment broke out in Flanders, and spread from thence over great part of France. An impostor declared himself commissioned by the Virgin to preach a crusade, not to the rich and noble, who for their pride had been rejected of God, but the poor. His disciples were called Pastoureaux, the simplicity of shepherds having exposed them more readily to this delusion. In a short time they were swelled by the confluence of abundant streams to a moving mass of a hundred thousand men, divided into companies, with banners bearing a cross and a lamb, and commanded by the impostor's lieutenants. He assumed a priestly character, preaching, absolving, annulling marriages. At Amiens, Bourges, Orleans, and Paris itself he was received as a divine prophet. Even the regent Blanche for a time was led away by the popular tide. His main topic was reproach of the clergy for their idleness and corruption—a theme well adapted to the ears of the people, who had long been uttering similar strains of complaint. In some towns his followers massacred the priests and plundered the monasteries. The government at length began to exert itself; and the public sentiment turning against the authors of so much confusion, this rabble was put to the sword or dissipated.[46] Seventy years afterward an insurrection, almost exactly parallel to this, burst out under the same pretence of a crusade. These insurgents, too, bore the name of Pastoureaux, and their short career was distinguished by a general massacre of the Jews.[47]

But though the contagion of fanaticism spreads much more

[45] Velly, tome iii, p. 295; Du Cange, v. Capuciati.

[46] Velly, "Hist. de France," tome v, p. 7; Du Cange, v. Pastorelli.

[47] Velly, "Hist. de France," tome viii, p. 99. The continuator of Nangis says, sicut fumus subitò evanuit tota illa commotio. ("Spicilegium," tome iii, p. 77.)

rapidly among the populace, and in modern times is almost entirely confined to it, there were examples, in the middle ages, of an epidemical religious lunacy, from which no class was exempt. One of these occurred about the year 1260, when a multitude of every rank, age, and sex, marching two by two in procession along the streets and public roads, mingled groans and dolorous hymns with the sound of leathern scourges which they exercised upon their naked backs. From this mark of penitence, which, as it bears at least all the appearance of sincerity, is not uncommon in the Church of Rome, they acquired the name of Flagellants. Their career began, it is said, at Perugia, whence they spread over the rest of Italy, and into Germany and Poland. As this spontaneous fanaticism met with no encouragement from the Church, and was prudently discountenanced by the civil magistrate, it died away in a very short time.[48] But it is more surprising that, after almost a century and a half of continual improvement and illumination, another irruption of popular extravagance burst out under circumstances exceedingly similar.[49] "In the month of August, 1399," says a contemporary historian, "there appeared all over Italy a description of persons, called Bianchi, from the white linen vestment that they wore. They passed from province to province, and from city to city, crying out 'Misericordia!' with their faces covered and bent toward the ground, and bearing before them a great crucifix. Their constant song was, 'Stabat Mater dolorosa.' This lasted three months, and whoever did not attend their procession was reputed a heretic." [50] Almost every Italian writer of the time takes notice of these Bianchi; and Muratori ascribes a remarkable reformation of manners (though certainly a very transient one) to their influence.[51] Nor were they confined to Italy, though no such meritorious exertions are imputed to them in other countries. In France their practice of covering the face gave such opportunity to crimes as to be prohibited by the government;[52] and we have an act on the rolls of the first Parliament of Henry IV, forbidding any one, "under pain of forfeiting all his worth, to receive the new sect in white clothes, pretending to great sanctity," which had recently appeared in foreign parts.[53]

The devotion of the multitude was wrought to this feverish

[48] Velly, tome v, p. 279; Du Cange, v, Verberatio.

[49] Something of a similar kind is mentioned by G. Villani, under the year 1310 (l. viii, c. 122).

[50] "Annal. Mediolan." in Murat., "Script. Rer. Ital.," tome xvi, p. 832; G. Stella, "Ann. Genueps," tome xvii, p. 1072; "Chron. Foroliviense," tome xix, p. 874; "Ann. Bonincontri," tome xxi, p. 79.

[51] "Dissert.," 75. Sudden transitions from profligate to austere manners were so common among individuals that we can not be surprised at their sometimes becoming in a manner national. Azarius, a chronicler of Milan, after describing the almost incredible dissoluteness of Pavia, gives an account of an instantaneous reformation wrought by the preaching of a certain friar. This was about 1350. ("Script. Rer. Ital," tome xvi, p. 375.)

[52] Villaret, tome xii, p. 327.

[53] "Rot. Parl.," vol. iii, p. 428.

height by the prevailing system of the clergy. In that singular polytheism, which had been grafted on Christianity, nothing was so conspicuous as the belief of perpetual miracles—if, indeed, those could properly be termed miracles which, by their constant recurrence, even upon trifling occasions, might seem within the ordinary dispensations of Providence. These superstitions arose in what are called primitive times, and are certainly no part of popery, if in that word we include any especial reference to the Roman See. But successive ages of ignorance swelled the delusion to such an enormous pitch that it was as difficult to trace, we may say without exaggeration, the real religion of the Gospel in the popular belief of the laity as the real history of Charlemagne in the romance of Turpin. It must not be supposed that these absurdities were produced, as well as nourished, by ignorance. In most cases they were the work of deliberate imposture. Every cathedral or monastery had its tutelar saint, and every saint his legend, fabricated in order to enrich the churches under his protection, by exaggerating his virtues, his miracles, and consequently his power of serving those who paid liberally for his patronage.[54] Many of those saints were imaginary persons; sometimes a blundered inscription added a name to the calendar, and sometimes, it is said, a heathen god was surprised at the company to which he was introduced, and the rites with which he was honoured.[55]

It would not be consonant to the nature of the present work to dwell upon the erroneousness of this religion; but its effect upon the moral and intellectual character of mankind was so prominent that no one can take a philosophical view of the middle ages without attending more than is at present fashionable to their ecclesiastical history. That the exclusive worship of saints, under the guidance of an artful though illiterate priesthood, degraded the understanding and begot a stupid credulity and fanaticism, is sufficiently evident. But it was also so managed as to loosen the bonds of religion and pervert the standard of morality. If these inhabitants of heaven had been represented as stern avengers, accepting no slight atonement for heavy offences, and prompt to interpose their control over natural events for the detection and punishment of guilt, the creed, however impossible to be reconciled with experience, might have proved a salutary check upon a rude people, and would at least have had the only palliation that can be offered for a religious imposture—its political expediency. In the legends of those times,

[54] This is confessed by the authors of "Histoire Littéraire de la France," tome ii. p. 4, and indeed by many Catholic writers. I need not quote Mosheim, who more than confirms every word of my text.

[55] Middleton's "Letter from Rome." If some of our eloquent countryman's positions should be disputed, there are still abundant Catholic testimonies that imaginary saints have been canonized.

on the contrary, they appeared only as perpetual intercessors, so good-natured and so powerful that a sinner was more emphatically foolish than he is usually represented if he failed to secure himself against any bad consequences. For a little attention to the saints, and especially to the Virgin, with due liberality to their servants, had saved, he would be told, so many of the most atrocious delinquents that he might equitably presume upon similar luck in his own case.

This monstrous superstition grew to its height in the twelfth century. For the advance that learning then made was by no means sufficient to counteract the vast increase of monasteries, and the opportunities which the greater cultivation of modern languages afforded for the diffusion of legendary tales. It was now, too, that the veneration paid to the Virgin, in early times very great, rose to an almost exclusive idolatry. It is difficult to conceive the stupid absurdity and the disgusting profaneness of those stories which were invented by the monks to do her honour. A few examples have been thrown into a note.[56]

[56] Le Grand d'Aussy has given us, in the fifth volume of his "Fabliaux," several of the religious tales by which the monks endeavoured to withdraw the people from romances of chivalry. The following specimens will abundantly confirm my assertions, which may perhaps appear harsh and extravagant to the reader.

There was a man whose occupation was highway robbery; but whenever he set out on any such expedition, he was careful to address a prayer to the Virgin. Taken at last, he was sentenced to be hanged. While the cord was round his neck he made his usual prayer, nor was it ineffectual. The Virgin supported his feet "with her white hands," and thus kept him alive two days, to the no small surprise of the executioner, who attempted to complete his work with strokes of a sword. But the same invisible hand turned aside the weapon, and the executioner was compelled to release his victim, acknowledging the miracle. The thief retired into a monastery, which is always the termination of these deliverances.

At the monastery of St. Peter, near Cologne, lived a monk perfectly dissolute and irreligious, but very devout toward the Apostle. Unluckily he died suddenly without confession. The fiends came as usual to seize his soul. St. Peter, vexed at losing so faithful a votary, besought God to admit the monk into paradise. His prayer was refused; and though the whole body of saints, apostles, angels, and martyrs joined at his request to make interest, it was of no avail. In this extremity he had recourse to the Mother of God. "Fair lady," he said, "my monk is lost if you do not interfere for him; but what is impossible for us will be but sport to you, if you please to assist us. Your Son, if you but speak a word, must yield, since it is in your power to command him." The Queen Mother assented, and, followed by all the virgins, moved toward her Son. He who had himself given the precept, "Honour thy father and thy mother," no sooner saw his own parent approach than he rose to receive her; and taking her by the hand inquired her wishes. The rest may be easily conjectured. Compare the gross stupidity, or rather the atrocious impiety of this tale, with the pure theism of the "Arabian Nights," and judge whether the Deity was better worshipped at Cologne or at Bagdad.

It is unnecessary to multiply instances of this kind. In one tale the Virgin takes the shape of a nun, who had eloped from the convent, and performs her duties ten years, till, tired of a libertine life, she returns unsuspected. This was in consideration of her having never omitted to say an Ave as she passed the Virgin's image. In another, a gentleman, in love with a handsome widow, consents, at the instigation of a sorcerer, to renounce God and the saints, but can not be persuaded to give up the Virgin, well knowing that if he kept her his friend he should obtain pardon through her means. Accordingly, she inspired his mistress with so much passion that he married her within a few days.

These tales, it may be said, were the production of ignorant men, and circulated among the populace. Certainly they would have excited contempt and indignation in the more enlightened clergy. But I am concerned with the general character of religious notions among the people: and for this it is better to take such popular compositions, adapted to what the laity already believed, than the writings of comparatively learned and reflecting men. However,

Whether the superstition of these dark ages had actually passed that point when it becomes more injurious to public morals and the welfare of society than the entire absence of all religious notions is a very complex question, upon which I would by no means pronounce an affirmative decision.[57] A salutary influence, breathed from the spirit of a more genuine religion, often displayed itself among the corruptions of a degenerate superstition. In the original principles of monastic orders, and the rules by which they ought at least to have been governed, there was a character of meekness, self-denial, and charity that could not wholly be effaced. These virtues, rather than justice and veracity, were inculcated by the religious ethics of the middle ages; and in the relief of indigence it may, upon the whole, be asserted that the monks did not fall short of their profession.[58] This eleemosynary spirit, indeed, remarkably distinguishes both Christianity and Mohammedanism from the moral systems of Greece and Rome, which were very deficient in general humanity and sympathy with suffering. Nor do we find in any single instance during ancient times, if I mistake not, those public institutions for the alleviation of human miseries which have long been scattered over every part of Europe. The virtues of the monks assumed a still higher character when they stood forward as protectors of the oppressed. By an established law, founded

stories of the same cast are frequent in the monkish historians. Matthew Paris, one of the most respectable of that class, and no friend to the covetousness or relaxed lives of the priesthood, tells us of a knight who was on the point of being damned for frequenting tournaments, but saved by a donation he had formerly made to the Virgin (p. 290).

[57] This hesitation about so important a question is what I would by no means repeat. Beyond every doubt, the evils of superstition in the middle ages, though separately considered very serious, are not to be weighed against the benefits of the religion with which they were so mingled. The fashion of the eighteenth century, among Protestants especially, was to exaggerate the crimes and follies of mediæval ages—perhaps I have fallen into it a little too much; in the present, we seem more in danger of extenuating them. We still want an inflexible impartiality in all that borders on ecclesiastical history, which, I believe, has never been displayed on an extensive scale. A more captivating book can hardly be named than the "Mores Catholici" of Mr. Digby; and it contains certainly a great deal of truth; but the general effect is that of a mirage, which confuses and deludes the sight. If those "ages of faith" were as noble, as pure, as full of human kindness, as he has delineated them, we have had a bad exchange in the centuries since the Reformation. And those who gaze at Mr. Digby's enchantments will do well to consider how they can better escape this consequence than he has done. Dr. Maitland's "Letters on the Dark Ages," and a great deal more that comes from the pseudo-Anglican or Anglo-Catholic press, converge to the same end: a strong sympathy with the mediæval church, a great indulgence to its errors, and, indeed, a reluctance to admit them, with a corresponding estrangement from all that has passed in the last three centuries. [1848.]

[58] I am inclined to acquiesce in this general opinion; yet an account of expenses at Bolton Abbey, about the reign of Edward II, published in Whitaker's "History of Craven," p. 51, makes a very scanty show of almsgiving in this opulent monastery. Much, however, was no doubt given in victuals. But it is a strange error to conceive that English monasteries before the dissolution fed the indigent part of the nation, and gave that general relief which the poor-laws are intended to afford.

Piers Plowman is indeed a satirist; but he plainly charges the monks with want of charity:

"Little had lordes to do to give landes from their heires
To religious that have no ruthe though it raine on their aultres;
In many places there the parsons be themself at ease,
Of the poor they have no pitie and that is their poor charitie."

on very ancient superstition, the precincts of a church afforded sanctuary to accused persons. Under a due administration of justice this privilege would have been simply and constantly mischievous, as we properly consider it to be in those countries where it still subsists. But in the rapine and tumult of the middle ages the right of sanctuary might as often be a shield to innocence as an immunity to crime. We can hardly regret, in reflecting on the desolating violence which prevailed, that there should have been some green spots in the wilderness where the feeble and the persecuted could find refuge. How must this right have enhanced the veneration for religious institutions! How gladly must the victims of internal warfare have turned their eyes from the baronial castle, the dread and scourge of the neighbourhood, to those venerable walls within which not even the clamour of arms could be heard to disturb the chant of holy men and the sacred service of the altar! The protection of the sanctuary was never withheld. A son of Chilperic, King of France, having fled to that of Tours, his father threatened to ravage all the lands of the Church unless they gave him up. Gregory, the historian, bishop of the city, replied in the name of his clergy that Christians could not be guilty of an act unheard of among pagans. The king was as good as his word, and did not spare the estate of the Church, but dared not infringe its privileges. He had, indeed, previously addressed a letter to St. Martin, which was laid on his tomb in the church, requesting permission to take away his son by force, but the honest saint returned no answer.[59]

The virtues indeed, or supposed virtues, which had induced a credulous generation to enrich so many of the monastic orders, were not long preserved. We must reject, in the excess of our candour, all testimonies that the middle ages present, from the solemn declaration of councils and reports of judicial inquiry to the casual evidence of common fame in the ballad or romance, if we would extenuate the general corruption of those institutions. In vain new rules of discipline were devised, or the old corrected by reforms. Many of their worst vices grew so naturally out of their mode of life that a stricter discipline could have no tendency to extirpate them. Such were the frauds I have already noticed, and the whole scheme of hypocritical austerities. Their extreme licentiousness was sometimes hardly concealed by the cowl of sanctity. I know not by what right we should disbelieve the reports of the visitation under Henry VIII, entering as they do into a multitude of specific charges both probable in their nature and consonant to the unanimous opinion of the world.[60] Doubtless there were many communities, as well as

[59] Schmidt, "Hist. des Allemands," tome i, p. 374.

[60] See Fosbrooke's "British Monachism" (vol. i, p. 127, and vol. ii, p. 8) for

individuals, to whom none of these reproaches would apply. In the very best view, however, that can be taken of monasteries, their existence is deeply injurious to the general morals of a nation. They withdraw men of pure conduct and conscientious principles from the exercise of social duties, and leave the common mass of human vice more unmixed. Such men are always inclined to form schemes of ascetic perfection, which can only be fulfilled in retirement; but in the strict rules of monastic life, and under the influence of a grovelling superstition, their virtue lost all its usefulness. They fell implicitly into the snares of crafty priests, who made submission to the Church not only the condition but the measure of all praise. "He is a good Christian," says Eligius, a saint of the seventh century, "who comes frequently to church; who presents an oblation that it may be offered to God on the altar; who does not taste the fruits of his land till he has consecrated a part of them to God; who can repeat the Creed or the Lord's Prayer. Redeem your souls from punishment while it is in your power; offer presents and tithes to churches, light candles in holy places, as much as you can afford, come more frequently to church, implore the protection of the saints; for, if you observe these things, you may come with security at the day of judgment to say, 'Give unto us, Lord, for we have given unto thee.'" [61]

With such a definition of the Christian character, it is not surprising that any fraud and injustice became honourable when

a farrago of evidence against the monks. Clemangis, a French theologian of considerable eminence at the beginning of the fifteenth century, speaks of nunneries in the following terms: "Quid aliud sunt hoc tempore puellarum monasteria, nisi quædam non dico Dei sanctuaria, sed Veneris execranda prostibula, sed lascivorum et impudicorum juvenum ad libidines explendas receptacula? ut idem sit hodie puellam velare, quod et publicè ad scortandum exponere." William Prynne, from whose records (vol. ii, p. 229) I have taken this passage, quotes it on occasion of a charter of King John, banishing thirty nuns of Ambresbury into different convents, propter vitæ suæ turpitudinem.

[61] Mosheim, cent. vii, c. 3. Robertson has quoted this passage, to whom perhaps I am immediately indebted for it. ("Hist. Charles V," vol. i, note 11.)

I leave this passage as it stood in former editions. But it is due to justice that this extract from Eligius should never be quoted in future, as the translator of Mosheim has induced Robertson and many others, as well as myself, to do. Dr. Lingard has pointed out that it is a very imperfect representation of what Eligius has written; for though he has dwelled on these devotional practices as parts of the definition of a good Christian, he certainly adds a great deal more to which no one could object. Yet no one is, in fact, to blame for this misrepresentation, which, being contained in popular books, has gone forth so widely. Mosheim, as will appear on referring to him, did not quote the passage as containing a complete definition of the Christian character. His translator, Maclaine, mistook this, and wrote, in consequence, the severe note which Robertson has copied. I have seen the whole passage in d'Achery's "Spicilegium" (vol. v, p. 213, 4to edit.), and can testify that Dr. Lingard is perfectly correct. Upon the whole, this is a striking proof how dangerous it is to take any authorities at second-hand.—(Note to fourth edition.) Much clamour has been made about the mistake of Maclaine, which was innocent and not unnatural. It has been commented upon, particularly by Dr. Arnold, as a proof of the risk we run of misrepresenting authors by quoting them at second-hand. And this is perfectly true, and ought to be constantly remembered. But, so long as we acknowledge the immediate source of our quotation, no censure is due, since in works of considerable extent this use of secondary authorities is absolutely indispensable, not to mention the frequent difficulty of procuring access to original authors. [1848.]

it contributed to the riches of the clergy and glory of their order. Their frauds, however, were less atrocious than the savage bigotry with which they maintained their own system and infected the laity. In Saxony, Poland, Lithuania, and the countries on the Baltic Sea, a sanguinary persecution extirpated the original idolatry. The Jews were everywhere the objects of popular insult and oppression, frequently of a general massacre, though protected, it must be confessed, by the laws of the Church, as well as in general by temporal princes.[62] Of the crusades it is only necessary to repeat that they began in a tremendous eruption of fanaticism, and ceased only because that spirit could not be constantly kept alive. A similar influence produced the devastation of Languedoc, the stakes and scaffolds of the Inquisition, and rooted in the religious theory of Europe those maxims of intolerance which it has so slowly, and still perhaps so imperfectly, renounced.

From no other cause are the dictates of sound reason and the moral sense of mankind more confused than by this narrow theological bigotry. For as it must often happen that men to whom the arrogance of a prevailing faction imputes religious error are exemplary for their performance of moral duties, these virtues gradually cease to make their proper impression, and are depreciated by the rigidly orthodox as of little value in comparison with just opinions in speculative points. On the other hand, vices are forgiven to those who are zealous in the faith. I speak too gently and with a view to later times; in treating of the dark ages it would be more correct to say that crimes were commended. Thus Gregory of Tours, a saint of the Church, after relating a most atrocious story of Clovis—the murder of a prince whom he had previously instigated to parricide—continues the sentence: "For God daily subdued his enemies to his hand, and increased his kingdom; because he walked before him in uprightness, and did what was pleasing in his eyes."[63]

[62] Mr. Turner has collected many curious facts relative to the condition of the Jews, especially in England. ("Hist. of England," vol. ii, p. 95.) Others may be found dispersed in Velly's "History of France"; and many in the Spanish writers, Mariana and Zurita. The following are from Vaissette's "History of Languedoc." It was the custom at Toulouse to give a blow on the face to a Jew every Easter; this was commuted in the twelfth century for a tribute (tome ii, p. 151). At Béziers another usage prevailed, that of attacking the Jews' houses with stones from Palm Sunday to Easter. No other weapon was to be used, but it generally produced bloodshed. The populace were regularly instigated to the assault by a sermon from the bishop. At length a prelate wiser than the rest abolished this ancient practice, but not without receiving a good sum from the Jews (p. 485).

[63] "Greg Tur.," l. ii, c. 40. Of Theodebert, grandson of Clovis, the same historian says, Magnum se et in omni bonitate præcipuum reddidit. In the next paragraph we find a story of his having two wives, and looking so tenderly on the daughter of one of them, that her mother tossed her over a bridge into the river (l. iii, c. 25). This indeed is a trifle to the passage in the text. There are continual proofs of immorality in the monkish historians. In the history of Ramsey Abbey, one of our best documents for Anglo-Saxon times, we have an anecdote of a bishop who made a Danish nobleman drunk, that he might cheat him of an estate, which is told with much approbation. (Gale, "Script. Anglic.," tome i, p. 441.) Walter de Hem-

It is a frequent complaint of ecclesiastical writers that the rigorous penances imposed by the primitive canons upon delinquents were commuted in a laxer state of discipline for less severe atonements, and ultimately, indeed, for money.[64] We must not, however, regret that the clergy should have lost the power of compelling men to abstain fifteen years from eating meat, or to stand exposed to public derision at the gates of a church. Such implicit submissiveness could only have produced superstition and hypocrisy among the laity, and prepared the road for a tyranny not less oppressive than that of India or ancient Egypt. Indeed, the two earliest instances of ecclesiastical interference with the rights of sovereigns—namely, the deposition of Wamba in Spain and that of Louis the Debonair—were founded upon this austere system of penitence. But it is true that a repentance redeemed by money or performed by a substitute could have no salutary effect on the sinner; and some of the modes of atonement which the Church most approved were particularly hostile to public morals. None was so usual as pilgrimage, whether to Jerusalem or Rome, which were the great objects of devotion, or to the shrine of some national saint—a James of Compostella, a David, or a Thomas à Becket. This licensed vagrancy was naturally productive of dissoluteness, especially among the women. Our English ladies, in their zeal to obtain the spiritual treasures of Rome, are said to have relaxed the necessary caution about one that was in their own custody.[65] There is a capitulary of Charlemagne directed against itinerant penitents, who probably considered the iron chain around their necks an expiation of future as well as past offences.[66]

The crusades may be considered as martial pilgrimages on an enormous scale, and their influence upon general morality seems to have been altogether pernicious. Those who served under the cross would not, indeed, have lived very virtuously at home; but the confidence in their own merits, which the principle of such expeditions inspired, must have aggravated the ferocity and dissoluteness of their ancient habits. Several historians attest the depravation of morals which existed both among the crusaders and in the states formed out of their conquests.[67]

While religion had thus lost almost every quality that ren-

ingford recounts with excessive delight the well-known story of the Jews who were persuaded by the captain of their vessel to walk on the sands at low water, till the rising tide drowned them; and adds that the captain was both pardoned and rewarded for it by the king, gratiam promeruit et præmium. This is a mistake, inasmuch as he was hanged; but it exhibits the character of the historian. (Hemingford, p. 21.)

[64] Fleury, "Troisième Discours sur l'Histoire Ecclésiastique."

[65] Henry, "Hist. of England," vol. ii, c. 7.

[66] Du Cange, v. Peregrinatio. Non sinantur vagari isti nudi cum ferro, qui dicunt se datâ pœnitentiâ ire vagantes. Melius videtur, ut si aliquod inconusetum et capitale crimen commiserint, in uno loco permaneant laborantes et servientes et pœnitentiam agentes, secundum quod canonicè iis impositum sit.

[67] I. de Vitriaco, in "Gesta Dei per Francos," tome i; Villani, l. vii, c. 144.

ders it conducive to the good order of society, the control of human law was still less efficacious. But this part of my subject has been anticipated in other passages of the present work; and I shall only glance at the want of regular subordination, which rendered legislative and judicial edicts a dead letter, and at the incessant private warfare, rendered legitimate by the usages of most continental nations. Such hostilities, conducted as they must usually have been with injustice and cruelty, could not fail to produce a degree of rapacious ferocity in the general disposition of a people. And this certainly was among the characteristics of every nation for many centuries.

It is easy to infer the degradation of society during the dark ages from the state of religion and police. Certainly there are a few great landmarks of moral distinctions so deeply fixed in human nature that no degree of rudeness can destroy, nor even any superstition remove them. Wherever an extreme corruption has in any particular society defaced these sacred archetypes that are given to guide and correct the sentiments of mankind, it is in the course of Providence that the society itself should perish by internal discord or the sword of a conqueror. In the worst ages of Europe there must have existed the seeds of social virtues, of fidelity, gratitude, and disinterestedness, sufficient at least to preserve the public approbation of more elevated principles than the public conduct displayed. Without these imperishable elements there could have been no restoration of the moral energies; nothing upon which reformed faith, revived knowledge, renewed law, could exercise their nourishing influences. But history, which reflects only the more prominent features of society, can not exhibit the virtues that were scarcely able to struggle through the general depravation. I am aware that a tone of exaggerated declamation is at all times usual with those who lament the vices of their own time; and writers of the middle ages are in abundant need of allowance on this score. Nor is it reasonable to found any inferences as to the general condition of society on single instances of crimes, however atrocious, especially when committed under the influence of violent passion. Such enormities are the fruit of every age, and none is to be measured by them. They make, however, a strong impression at the moment, and thus find a place in contemporary annals, from which modern writers are commonly glad to extract whatever may seem to throw light upon manners. I shall, therefore, abstain from producing any particular cases of dissoluteness or cruelty from the records of the middle ages, lest I should weaken a general proposition by offering an imperfect induction to support it, and shall content myself with observing that times to which men sometimes appeal, as to a golden period,

were far inferior in every moral comparison to those in which we are thrown.[68] One crime, as more universal and characteristic than others, may be particularly noticed. All writers agree in the prevalence of judicial perjury. It seems to have almost invariably escaped human punishment; and the barriers of superstition were in this, as in every other instance, too feeble to prevent the commission of crimes. Many of the proofs by ordeal were applied to witnesses as well as those whom they accused; and undoubtedly trial by combat was preserved in a considerable degree on account of the difficulty experienced in securing a just cause against the perjury of witnesses. Robert, King of France, perceiving how frequently men forswore themselves upon the relics of saints, and less shocked apparently at the crime than at the sacrilege, caused an empty reliquary of crystal to be used, that those who touched it might incur less guilt in fact, though not in intention. Such an anecdote characterizes both the man and the times.[69]

The favourite diversions of the middle ages, in the intervals of war, were those of hunting and hawking. The former must in all countries be a source of pleasure; but it seems to have been enjoyed in moderation by the Greeks and the Romans. With the northern invaders, however, it was rather a predominant appetite than an amusement; it was their pride and their ornament, the theme of their songs, the object of their laws, and the business of their lives. Falconry, unknown as a diversion to the ancients, became from the fourth century an equally delightful occupation.[70] From the Salic and other barbarous codes of the fifth century to the close of the period under our review, every age would furnish testimony to the ruling passion for these two species of chase, or, as they were sometimes called, the mysteries of woods and rivers. A knight seldom stirred from his house without a falcon on his wrist or a greyhound that followed him. Thus are Harold and his attendants represented in the

[68] Henry has taken pains in drawing a picture, not very favourable, of Anglo-Saxon manners. (Book II, chap. 7.) This perhaps is the best chapter, as the volume is the best volume, of his unequal work. His account of the Anglo-Saxons is derived in a great degree from William of Malmesbury, who does not spare them. Their civil history, indeed, and their laws, speak sufficiently against the character of that people. But the Normans had little more to boast of in respect of moral correctness. Their luxurious and dissolute habits are as much noticed as their insolence. (Vid. "Ordericus Vitalis," p. 602; "Johann. Sarisburiensis Policraticus," p. 194; Velly, "Hist. de France," tome iii, p. 59.) The state of manners in France under the first two races of kings, and in Italy both under the Lombards and the subsequent dynasties, may be collected from their histories, their laws, and those miscellaneous facts which books of every description contain. Neither Velly, nor Muratori, "Dissert. 23," are so satisfactory as we might desire.

[69] Velly, "Hist. de France," tome ii, p. 335. It has been observed, that Quid mores sine legibus? is as just a question as that of Horace; and that bad laws must produce bad morals. The strange practice of requiring numerous compurgators to prove the innocence of an accused person had a most obvious tendency to increase perjury.

[70] Muratori, "Dissert. 23," tome i, p. 306 (Italian); Beckman's "Hist. of Inventions," vol. i, p. 319; "Vie privée des Français," tome ii, p. 1.

famous tapestry of Bayeux. And in the monuments of those who died anywhere but on the field of battle it is usual to find the greyhound lying at their feet or the bird upon their wrists. Nor are the tombs of ladies without their falcon; for this diversion, being of less danger and fatigue than the chase, was shared by the delicate sex.[71]

It was impossible to repress the eagerness with which the clergy, especially after the barbarians were tempted by rich bishoprics to take upon them the sacred functions, rushed into these secular amusements. Prohibitions of councils, however frequently repeated, produced little effect. In some instances a particular monastery obtained a dispensation. Thus that of St. Denis, in 774, represented to Charlemagne that the flesh of hunted animals was salutary for sick monks, and that their skins would serve to bind the books in the library.[72] Reasons equally cogent, we may presume, could not be wanting in every other case. As the bishops and abbots were perfectly feudal lords, and often did not scruple to lead their vassals into the field, it was not to be expected that they should debar themselves of an innocent pastime. It was hardly such, indeed, when practised at the expense of others. Alexander III, by a letter to the clergy of Berkshire, dispenses with their keeping the archdeacon in dogs and hawks during his visitation.[73] This season gave jovial ecclesiastics an opportunity of trying different countries. An Archbishop of York, in 1321, seems to have carried a train of two hundred persons, who were maintained at the expense of the abbeys on his road, and to have hunted with a pack of hounds from parish to parish.[74] The third Council of Lateran, in 1180, had prohibited this amusement on such journeys, and restricted bishops to a train of forty or fifty horses.[75]

Though hunting had ceased to be a necessary means of procuring food, it was a very convenient resource, on which the wholesomeness and comfort, as well as the luxury, of the table depended. Before the natural pastures were improved, and new kinds of fodder for cattle discovered, it was impossible to maintain the summer stock during the cold season. Hence a portion of it was regularly slaughtered and salted for winter provision. We may suppose that, when no alternative was offered but these salted meats, even the leanest venison was devoured with relish. There was somewhat more excuse, therefore, for the severity with which the lords of forests and manors preserved the beasts of chase than if they had been considered as merely objects of sport. The laws relating to preservation of game were in every country

[71] "Vie privée des Français," tome i, p. 320; tome ii, p. 11.
[72] Ibid., tome i, 324.
[73] Rymer, tome i, p. 61.
[74] Whitaker's "Hist. of Craven," p. 340, and of Whalley, p. 171.
[75] Velly, "Hist. de France," tome iii, p. 239.

uncommonly rigorous. They formed in England that odious system of forest laws which distinguished the tyranny of our Norman kings. Capital punishment for killing a stag or wild boar was frequent, and perhaps warranted by law, until the charter of John.[76] The French code was less severe, but even Henry IV enacted the pain of death against the repeated offence of chasing deer in the royal forests. The privilege of hunting was reserved to the nobility till the reign of Louis IX, who extended it in some degree to persons of lower birth.[77]

This excessive passion for the sports of the field produced those evils which are apt to result from it—a strenuous idleness which disdained all useful occupations, and an oppressive spirit toward the peasantry. The devastation committed under the pretence of destroying wild animals, which had been already protected in their depredations, is noticed in serious authors, and has also been the topic of popular ballads.[78] What effect this must have had on agriculture it is easy to conjecture. The levelling of forests, the draining of morasses, and the extirpation of mischievous animals which inhabit them are the first objects of man's labour in reclaiming the earth to his use; and these were forbidden by a landed aristocracy, whose control over the progress of agricultural improvement was unlimited, and who had not yet learned to sacrifice their pleasures to their avarice.

These habits of the rich, and the miserable servitude of those who cultivated the land, rendered its fertility unavailing. Predial servitude indeed, in some of its modifications, has always been the great bar to improvement. In the agricultural economy of Rome the labouring husbandman, a menial slave of some wealthy senator, had not even that qualified interest in the soil which the tenure of villenage afforded to the peasant of feudal ages. Italy, therefore, a country presenting many natural impediments, was but imperfectly reduced into cultivation before the irruption of the barbarians.[79] That revolution destroyed agriculture with every other art, and succeeding calamities during

[76] John of Salisbury inveighs against the game-laws of his age, with an odd transition from the Gospel to the Pandects. Nec veriti sunt hominem pro unâ bestiolâ perdere, quem unigenitus Dei Filius sanguine redemit suo. Quæ feræ naturæ sunt, et de jure occupantium fiunt, sibi audet humana temeritas vindicare, etc. ("Polycraticon," p. 18.)

[77] Le Grand, "Vie privée des Français," tome I, p. 325.

[78] For the injuries which this people sustained from the seignorial rights of the chase, in the eleventh century, see the "Recueil des Historiens," in the valuable preface to the eleventh volume, p. 181. This continued to be felt in France down to the Revolution, to which it did not perhaps a little contribute. (See Young's "Travels in France.") The monstrous privilege of free-warren (monstrous, I mean, when not originally founded upon the property of the soil) is recognised by our own laws; though in this age it is not often that a court and jury will sustain its exercise. Sir Walter Scott's ballad of the Wild Huntsman, from a German original, is well known; and, I believe, there are several others in that country not dissimilar in subject.

[79] Muratori, "Dissert. 21." This dissertation contains ample evidence of the wretched state of culture in Italy, at least in the northern parts, both before the irruption of the barbarians, and, in a much greater degree, under the Lombard kings.

five or six centuries left the finest regions of Europe unfruitful and desolate. There are but two possible modes in which the produce of the earth can be increased: one by rendering fresh land serviceable, the other by improving the fertility of that which is already cultivated. The last is only attainable by the application of capital and of skill to agriculture, neither of which could be expected in the ruder ages of society. The former is, to a certain extent, always practicable while waste lands remain; but it was checked by laws hostile to improvement, such as the manorial and commonable rights in England, and by the general tone of manners.

Till the reign of Charlemagne there were no towns in Germany, except a few that had been erected on the Rhine and Danube by the Romans. A house with its stables and farm buildings, surrounded by a hedge or inclosure, was called a court, or, as we find it in our law-books, a curtilage—the toft or homestead of a more genuine English dialect. One of these, with the adjacent domain of arable fields and woods, had the name of a villa or manse. Several manses composed a march, and several marches formed a pagus or district.[80] From these elements in the progress of population arose villages and towns. In France undoubtedly there were always cities of some importance. Country parishes contained several manses or farms of arable lands, around a common pasture, where every one was bound by custom to feed his cattle.[81]

The condition even of internal trade was hardly preferable to that of agriculture. There is not a vestige perhaps to be discovered for several centuries of any considerable manufacture; I mean, of working up articles of common utility to an extent beyond what the necessities of an adjacent district required.[82] Rich men kept domestic artisans among their servants; even kings, in the ninth century, had their clothes made by the women upon their farms;[83] but the peasantry must have been supplied with garments and implements of labour by purchase; and every

[80] Schmidt, "Hist. des Allem.," tome i, p. 408. The following passage seems to illustrate Schmidt's account of German villages in the ninth century, though relating to a different age and country. "A toft," says Dr. Whitaker, "is a homestead in a village, so called from the small tufts of maple, elm, ash, and other wood, with which dwelling-houses were anciently overhung. Even now it is impossible to enter Craven without being struck with the insulated homesteads, surrounded by their little garths, and overhung with tufts of trees. These are the genuine tofts and crofts of our ancestors, with the substitution only of stone for the wooden crocks and thatched roofs of antiquity." ("Hist. of Craven," p. 380.)

[81] It is laid down in the "Speculum Saxonicum," a collection of feudal customs which prevailed over most of Germany, that no one might have a separate pasture for his cattle unless he possessed three mansi. (Du Cange, v. Mansus.) There seems to have been a price paid, I suppose to the lord, for agistment in the common pasture.

[82] The only mention of a manufacture as early as the ninth or tenth centuries, that I remember to have met with, is in Schmidt, tome ii, p. 146, who says that sloths were exported from Friesland to England and other parts. He quotes no authority, but I am satisfied that he has not advanced the fact gratuitously.

[83] Schmidt, tome i, p. 411; tome ii, p. 146.

town, it can not be doubted, had its weaver, its smith, and its currier. But there were almost insuperable impediments to any extended traffic—the insecurity of movable wealth, and difficulty of accumulating it; the ignorance of mutual wants; the peril of robbery in conveying merchandise, and the certainty of extortion. In the domains of every lord a toll was to be paid in passing his bridge, or along his highway, or at his market.[84] These customs, equitable and necessary in their principle, became in practice oppressive, because they were arbitrary, and renewed in every petty territory which the road might intersect. Several of Charlemagne's capitularies repeat complaints of these exactions, and endeavour to abolish such tolls as were not founded on prescription.[85] One of them rather amusingly illustrates the modesty and moderation of the landholders. It is enacted that no one shall be compelled to go out of his way in order to pay toll at a particular bridge, when he can cross the river more conveniently at another place.[86] These provisions, like most others of that age, were unlikely to produce much amendment. It was only the milder species, however, of feudal lords who were content with the tribute of merchants. The more ravenous descended from their fortresses to pillage the wealthy traveller, or shared in the spoil of inferior plunderers, whom they both protected and instigated. Proofs occur, even in the later periods of the middle ages, when government had regained its energy, and civilization had made considerable progress, of public robberies systematically perpetrated by men of noble rank. In the more savage times, before the twelfth century, they were probably too frequent to excite much attention. It was a custom in some places to waylay travellers, and not only to plunder, but to sell them as slaves, or compel them to pay a ransom. Harold, son of Godwin, having been wrecked on the coast of Ponthieu, was imprisoned by the lord, says a historian, according to the custom of that territory.[87] Germany appears to have been, upon the whole, the country where downright robbery was most unscrupulously practised by the great. Their castles, erected on almost inaccessible heights among the woods, became the secure receptacles of predatory bands, who spread terror over the country. From these barbarian lords of the dark ages, as from a living model, the romances are said to have drawn their giants and other disloyal enemies of true chivalry. Robbery, indeed, is the constant theme both of the capitularies and of the Anglo-Saxon laws; one has

[84] Du Cange, Pedagium, Pontaticum, Teloneum, Mercatum, Stallagium, Lastagium, etc.

[85] "Baluz. Capit.," p. 621 et alibi.

[86] Ut nullus cogatur ad pontem ire ad fluvium transeundum propter telonei causas quando ille in alio loco compendiosius illud flumen transire protest., p. 764 et alibi.

[87] "Eadmer apud Recueil des Historiens des Gaules," tome xi, preface. p. 192. Pro ritu illius loci, a domino terræ captivitati addicitur.

more reason to wonder at the intrepid thirst of lucre, which induced a very few merchants to exchange the products of different regions, than to ask why no general spirit of commercial activity prevailed.

Under all these circumstances it is obvious that very little Oriental commerce could have existed in these western countries of Europe. Destitute as they have been created, speaking comparatively, of natural productions fit for exportation, their invention and industry are the great resources from which they can supply the demands of the East. Before any manufactures were established in Europe, her commercial intercourse with Egypt and Asia must of necessity have been very trifling; because, whatever inclination she might feel to enjoy the luxuries of those genial regions, she wanted the means of obtaining them. It is not therefore necessary to rest the miserable condition of Oriental commerce upon the Saracen conquests, because the poverty of Europe is an adequate cause; and, in fact, what little traffic remained was carried on with no material inconvenience through the channel of Constantinople. Venice took the lead in trading with Greece and more eastern countries.[88] Amalfi had the second place in the commerce of those dark ages. These cities imported, besides natural productions, the fine clothes of Constantinople; yet as this traffic seems to have been illicit, it was not probably extensive.[89] Their exports were gold and silver, by which, as none was likely to return, the circulating money of Europe was probably less in the eleventh century than at the subversion of the Roman Empire; furs, which were obtained from the Slavonian countries; and arms, the sale of which to pagans or Saracens was vainly prohibited by Charlemagne and by the Holy See.[90] A more scandalous traffic, and one that still more fitly called for prohibitory laws, was carried on in slaves. It is a humiliating proof of the degradation of Christendom that the Venetians were reduced to purchase the luxuries of Asia by supplying the slave-market of the Saracens.[91] Their apology

[88] Heeren has frequently referred to a work published in 1789, by Marini, entitled "Storia civile e politica del Commerzio de' Veneziani," which casts a new light upon the early relations of Venice with the East. Of this book I know nothing; but a memoir by De Guignes, in the thirty-seventh volume of the Academy of Inscriptions, on the commerce of France with the East before the crusades, is singularly unproductive; the fault of the subject, not of the author.

[89] There is an odd passage in Liutprand's relation of his embassy from the Emperor Otho to Nicephorus Procas. The Greeks making a display of their dress, he told them that in Lombardy the common people wore as good clothes as they. How, they said, can you procure them? Through the Venetian and Amalfitan dealers, he replied, who gain their subsistence by selling them to us. The foolish Greeks were very angry, and declared that any dealer presuming to export their fine clothes should be flogged. ("Liutprandi Opera," p. 155, edit. Antwerp, 1640.)

[90] "Baluz. Capitul.," p. 775. One of the main advantages which the Christian nations possessed over the Saracens was the coat of mail, and other defensive armour, so that this prohibition was founded upon very good political reasons.

[91] Schmidt, "Hist. des Allem.," tome ii, p. 146; Heeren, "Sur l'Influence des

would perhaps have been that these were purchased from their heathen neighbours; but a slave-dealer was probably not very inquisitive as to the faith or origin of his victim. This trade was not peculiar to Venice. In England it was very common, even after the conquest, to export slaves to Ireland, till, in the reign of Henry II, the Irish came to a non-importation agreement, which put a stop to the practice.[92]

From this state of degradation and poverty all the countries of Europe have recovered, with a progression in some respects tolerably uniform, in others more unequal; and the course of their improvement, more gradual and less dependent upon conspicuous civil revolutions than their decline, affords one of the most interesting subjects into which a philosophical mind can inquire. The commencement of this restoration has usually been dated from about the close of the eleventh century, though it is unnecessary to observe that the subject does not admit of anything approximating to chronological accuracy. It may, therefore, be sometimes not improper to distinguish the first six of the ten centuries which the present work embraces under the appellation of the dark ages—an epithet which I do not extend to the twelfth and three following. In tracing the decline of society from the subversion of the Roman Empire, we have been led, not without connection, from ignorance to superstition, from superstition to vice and lawlessness, and from thence to general rudeness and poverty. I shall pursue an inverted order in passing along the ascending scale, and class the various improvements which took place between the twelfth and fifteenth centuries under three principal heads, as they relate to the wealth, the manners, or the taste and learning of Europe. Different arrangements might probably be suggested, equally natural and convenient; but in the disposition of topics that have not always an unbroken connection with each other, no method can be prescribed as absolutely more scientific than the rest. That which I have adopted appears to me as philosophical and as little liable to transitions as any other.

The geographical position of Europe naturally divides its

Croisades," p. 316. In Baluze we find a law of Carloman, brother to Charlemagne: Ut mancipia Christiana paganis non vendantur. ("Capitularia," tome i, p. 150, vide quoque, p. 361.)

[92] William of Malmesbury accuses the Anglo-Saxon nobility of selling their female servants, even when pregnant by them, as slaves to foreigners (p. 102). I hope there were not many of these Yaricoes; and should not perhaps have given credit to a historian rather prejudiced against the English, if I had not found too much authority for the general practice. In the canons of a council at London in 1102 we read, "Let no one from henceforth presume to carry on that wicked traffic by which men of England have hitherto been sold like brute animals." (Wilkins's "Concilia," tome i, p. 383.) And Giraldus Cambrensis says that the English before the conquest were generally in the habit of selling their children and other relations to be slaves in Ireland, without having even the pretext of distress or famine, till the Irish, in a national synod, agreed to emancipate all the English slaves in the kingdom. (Id., p. 471.) This seems to have been designed to take away all pretext for the threatened invasion of Henry II. (Littleton, vol. iii, p. 70.)

maritime commerce into two principal regions—one comprehending those countries which border on the Baltic, the German and the Atlantic Oceans; another, those situated around the Mediterranean Sea. During the four centuries which preceded the discovery of America, and especially the two former of them, this separation was more remarkable than at present, inasmuch as their intercourse, either by land or sea, was extremely limited. To the first region belonged the Netherlands, the coasts of France, Germany, and Scandinavia, and the maritime districts of England. In the second we may class the provinces of Valencia and Catalonia, those of Provence and Languedoc, and the whole of Italy.

1. The former, or northern division, was first animated by the woollen manufacture of Flanders. It is not easy either to discover the early beginnings of this, or to account for its rapid advancement. The fertility of that province and its facilities of interior navigation were doubtless necessary causes; but there must have been some temporary encouragement from the personal character of its sovereigns, or other accidental circumstances. Several testimonies to the flourishing condition of Flemish manufactures occur in the twelfth century, and some might perhaps be found even earlier.[93] A writer of the thirteenth asserts that all the world was clothed from English wool wrought in Flanders.[94] This, indeed, is an exaggerated vaunt; but the Flemish stuffs were probably sold wherever the sea or a navigable river permitted them to be carried. Cologne was the chief trading city upon the Rhine; and its merchants, who had been considerable even under the Emperor Henry IV, established a factory at London in 1220. The woollen manufactures, notwithstanding frequent wars and the impolitic regulations of magistrates,[95] continued to flourish in the Netherlands (for Brabant and Hainault shared it in some degree with Flanders), until England became not only capable of supplying her own demand, but a rival in all the marts of Europe. "All Christian kingdoms, and even the Turks themselves," says a historian of the sixteenth century, "lamented the desperate war between the Flemish cities and their Count Louis, that broke out in 1380. For at that time

[93] Macpherson's "Annals of Commerce," vol. i, p. 270. Meyer ascribes the origin of Flemish trade to Baldwin, Count of Flanders, in 958, who established markets at Bruges and other cities. Exchanges were, in that age, he says, chiefly effected by barter, little money circulating in Flanders. ("Annales Flandrici," fol. 18 [edit. 1561].)

[94] Matthew Westmonast. apud Macpherson's "Annals of Commerce," vol. i, p. 415.

[95] Such regulations scared away those Flemish weavers who brought their art into England under Edward III. (Macpherson, pp. 467, 494, 546.) Several years later the magistrates of Ghent are said by Meyer ("Annales Flandrici," fol. 156) to have imposed a tax on every loom. Though the seditious spirit of the Weavers' Company had perhaps justly provoked them, such a tax on their staple manufacture was a piece of madness, when English goods were just coming into competition.

Flanders was a market for the traders of all the world. Merchants from seventeen kingdoms had their setlted domiciles at Bruges, besides strangers from almost unknown countries who repaired thither."[96] During this war, and on all other occasions, the weavers both of Ghent and Bruges distinguished themselves by a democratical spirit, the consequence, no doubt, of their numbers and prosperity.[97] Ghent was one of the largest cities in Europe, and, in the opinion of many, the best situated.[98] But Bruges, though in circuit but half the former, was more splendid in its buildings, and the seat of far more trade, being the great staple both for Mediterranean and northern merchandise.[99] Antwerp, which early in the sixteenth century drew away a large part of this commerce from Bruges, was not considerable in the preceding ages; nor were the towns of Zealand and Holland much noted except for their fisheries, though those provinces acquired in the fifteenth century some share of the woollen manufacture.

For the first two centuries after the conquest our English towns, as has been observed in a different place, made some forward steps toward improvement, though still very inferior to those of the Continent. Their commerce was almost confined to the exportation of wool, the great staple commodity of England, upon which, more than any other, in its raw or manufactured state, our wealth has been founded. A woollen manufacture, however, indisputably existed under Henry II;[100] it is noticed in regulations of Richard I; and by the importation of woad under John it may be inferred to have still flourished. The disturbances of the next reign, perhaps, or the rapid elevation of the Flemish towns, retarded its growth, though a remarkable law was passed by the Oxford Parliament in 1261, prohibiting the

[96] Terrâ marique mercatura, rerumque commercia et quæstus peribant. Non solum totius Europæ mercatores, verum etiam ipsi Turcæ aliæque sepositæ nationes ob bellum istud Flandriæ magno afficiebantur dolore. Erat nempe Flandria totius prope orbis stabile mercatoribus emporium. Septemdecim regnorum negotiatores tum Brugis sua certa habuere domicilia ac sedes, præter complures incognitas pæne gentes quæ undique confluebant. (Meyer, fol. 205, ad ann. 1385.)

[97] Meyer; Froissart; Comines.

[98] It contained, according to Ludovico Guicciardini, 35,000 houses, and the circuit of its walls was 45,640 Roman feet. ("Description des Pais Bas," p. 350, etc. [edit. 1609].) Part of this inclosure was not built upon. The population of Ghent is reckoned by Guicciardini at 70,000, but in his time it had greatly declined. It is certainly, however, much exaggerated by earlier historians. And I entertain some doubts as to Guicciardini's estimate of the number of houses. If at least he was accurate, more than half of the city must since have been demolished or become uninhabited, which its present appearance does not indicate; for Ghent, though not very flourishing, by no means presents the decay and dilapidation of several Italian towns.

[99] Guicciardini, p. 362; "Mém. de Comines," l. v, c. 17; Meyer, fol. 354; Macpherson's "Annals of Commerce," vol. i, pp. 467, 651.

[100] Blomefield, the historian of Norfolk, thinks that a colony of Flemings settled as early as this reign at Worsted, a village in that county, and immortalized its name by their manufacture. It soon reached Norwich, though not conspicuous till the reign of Edward I. ("Hist. of Norfolk," vol. ii.) Macpherson speaks of it for the first time in 1327. There were several guilds of weavers in the time of Henry II. (Littleton, vol. ii, p. 174.)

export of wool and the importation of cloth. This, while it shows the deference paid by the discontented barons, who predominated in that Parliament, to their confederates the burghers, was evidently too premature to be enforced. We may infer from it, however, that cloths were made at home, though not sufficiently for the people's consumption.[101]

Prohibitions of the same nature, though with a different object, were frequently imposed on the trade between England and Flanders by Edward I and his son. As their political connections fluctuated, these princes gave full liberty and settlement to the Flemish merchants, or banished them at once from the country.[102] Nothing could be more injurious to England than this arbitrary vacillation. The Flemings were in every respect our natural allies; but besides those connections with France, the constant enemy of Flanders, into which both the Edwards occasionally fell, a mutual alienation had been produced by the trade of the former people with Scotland—a trade too lucrative to be resigned at the King of England's request[103]—an early instance of that conflicting selfishness of belligerents and neutrals, which was destined to aggravate the animosities and misfortunes of our own time.[104]

A more prosperous era began with Edward III, the father, as he may almost be called, of English commerce, a title not indeed more glorious, but by which he may perhaps claim more of our gratitude than as the hero of Crécy. In 1331 he took advantage of discontent among the manufacturers of Flanders to invite them as settlers into his dominions.[105] They brought the finer manufacture of woollen cloths, which had been unknown in England. The discontent alluded to resulted from the monopolizing spirit of their corporations, who oppressed all artisans without the pale of their community. The history of corporations brings home to our minds one cardinal truth, that political institutions have very frequently but a relative and temporary usefulness, and that what forwarded improvement during one part of its course may prove to it in time a most pernicious obstacle. Corporations in England, we may be sure, wanted nothing of their usual character; and it cost Edward no little

[101] Macpherson's "Annals of Commerce," vol. i, p. 412, from Walter Hemingford. I am considerably indebted to this laborious and useful publication, which has superseded that of Anderson.

[102] Rymer, tome ii, pp. 32, 50, 737, 949, 965; tome iii, pp. 533, 1100, et alibi.

[103] Rymer, tome iii, p. 759. A Flemish factory was established at Berwick about 1286. (Macpherson.)

[104] In 1295 Edward I made masters of neutral ships in English ports find security not to trade with France. (Rymer, tome ii, p. 679.)

[105] Rymer, tome iv, p. 491, etc. Fuller draws a notable picture of the inducements held out to the Flemings. "Here they should feed on fat beef and mutton, till nothing but their fulness should stint their stomachs; their beds should be good, and their bedfellows better, seeing the richest yeomen in England would not disdain to marry their daughters unto them, and such the English beauties that the most envious foreigners could not but commend them." (Fuller's "Church History," quoted in Blomefield's "Hist. of Norfolk.")

trouble to protect his colonists from the selfishness and from the blind nationality of the vulgar.[106] The emigration of Flemish weavers into England continued during this reign, and we find it mentioned at intervals for more than a century.

Commerce now became, next to liberty, the leading object of Parliament. For the greater part of our statutes from the accession of Edward III bear relation to this subject; not always well devised, or liberal, or consistent, but by no means worse in those respects than such as have been enacted in subsequent ages. The occupation of a merchant became honourable; and, notwithstanding the natural jealousy of the two classes, he was placed, in some measure, on a footing with landed proprietors. By the statute of apparel, in 37 Edward III, merchants and artificers who had five hundred pounds' value in goods and chattels might use the same dress as squires of one hundred pounds a year. And those who were worth more than this might dress like men of double that estate. Wool was still the principal article of export and source of revenue. Subsidies granted by every Parliament upon this article were, on account of the scarcity of money, commonly taken in kind. To prevent evasion of this duty seems to have been the principle of those multifarious regulations which fix the staple, or market for wool, in certain towns, either in England, or, more commonly, on the Continent. To these all wool was to be carried, and the tax was there collected. It is not easy, however, to comprehend the drift of all the provisions relating to the staple, many of which tend to benefit foreign at the expense of English merchants. By degrees the exportation of woollen cloths increased so as to diminish that of the raw material, but the latter was not absolutely prohibited during the period under review,[107] although some restrictions were imposed upon it by Edward IV. For a much earlier statute, in 11 Edward III, making the exportation of wool a capital felony, was in its terms provisional, until it should be otherwise ordered by the council; and the king almost immediately set it aside.[108]

[106] Rymer, tome v, pp. 137, 430, 540.

[107] In 1409 woollen cloths formed a great part of our exports, and were extensively used over Spain and Italy. And in 1449, English cloths having been prohibited by the Duke of Burgundy, it was enacted that, until he should repeal this ordinance, no merchandise of his dominions should be admitted into England (27 H. VI, c. 1). The system of prohibiting the import of foreign-wrought goods was acted upon very extensively in Edward IV's reign.

[108] Stat., 11 E. III, c. 1. Blackstone says that transporting wool out of the kingdom, to the detriment of our staple manufacture, was forbidden at common law (vol. iv, c. 19), not recollecting that we had no staple manufactures in the ages when the common law was formed, and that the export of wool was almost the only means by which this country procured silver, or any other article of which it stood in need, from the continent. In fact, the landholders were so far from neglecting this source of their wealth, that a minimum was fixed upon it, by a statute of 1343 (repealed indeed the next year, 18 E. III, c. 3), below which price it was not to be sold; from a laudable apprehension, as it seems, that foreigners were getting it too cheap. And this was revived in the 32d of H. VI, though the act is not printed among the statutes. ("Rot. Parl.," tome v, p. 275.) The exportation of sheep was prohibited in 1338 (Rymer, tome v, p. 36), and by act of Parliament in 1425 (3 H.

A manufacturing district, as we see in our own country, sends out, as it were, suckers into all its neighbourhood. Accordingly, the woollen manufacture spread from Flanders along the banks of the Rhine and into the northern provinces of France.[109] I am not, however, prepared to trace its history in these regions. In Germany the privileges conceded by Henry V to the free cities, and especially to their artisans, gave a soul to industry, though the central parts of the empire were, for many reasons, very ill calculated for commercial enterprise during the middle ages.[110] But the French towns were never so much emancipated from arbitrary power as those of Germany or Flanders; and the evils of exorbitant taxation, with those produced by the English wars, conspired to retard the advance of manufactures in France. That of linen made some little progress; but this work was still, perhaps, chiefly confined to the labour of female servants.[111]

The manufactures of Flanders and England found a market not only in these adjacent countries, but in a part of Europe which for many ages had only been known enough to be dreaded. In the middle of the eleventh century a native of Bremen, and a writer much superior to most others of his time, was almost entirely ignorant of the geography of the Baltic, doubting whether any one had reached Russia by that sea, and reckoning Esthonia and Courland among its islands.[112] But in one hundred years more the maritime regions of Mecklenburg and Pomerania, inhabited by a tribe of heathen Slavonians, were subdued by some German princes; and the Teutonic order some time afterward, having conquered Prussia, extended a line of at least comparative civilization as far as the Gulf of Finland. The first town erected on the coasts of the Baltic was Lubec, which owes its foundation to Adolphus, Count of Holstein, in 1140. After

VI, c. 2). But this did not prevent our importing the wool of a foreign country, to our own loss. It is worthy of notice that English wool was superior to any other for fineness during these ages. Henry II, in his patent to the Weavers' Company, directs that if any weaver mingled Spanish wool with English, it should be burned by the lord mayor. (Macpherson, p. 382.) An English flock transported into Spain about 1348 is said to have been the source of the fine Spanish wool. (Ibid., p. 539.) But the superiority of English wool, even as late as 1438, is proved by the laws of Barcelona forbidding its adulteration (p. 654). Another exportation of English sheep to Spain took place about 1465, in consequence of a commercial treaty. (Rymer, tome xi, p. 534 et alibi.) In return, Spain supplied England with horses, her breed of which was reckoned the best in Europe; so that the exchange was tolerably fair. (Macpherson, p. 596.) The best horses had been very dear in England, being imported from Spain and Italy. (Ibid.)

[109] Schmidt, tome iv, p. 18.

[110] Considerable woollen manufactures appear to have existed in Picardy about 1315. (Macpherson ad annum; Capmany, tome iii, part 2, p. 151.)

[111] The sheriffs of Wiltshire and Sussex are directed in 1253 to purchase for the king 1,000 ells of fine linen, linæ telæ pulchræ et delicate. This Macpherson supposes to be of domestic manufacture, which, however, is not demonstrable. Linen was made at that time in Flanders; and as late as 1417 the fine linen used in England was imported from France and the Low Countries. (Macpherson, from Rymer, tome ix, p. 334.) Velly's history is defective in giving no account of the French commerce and manufactures, or at least none that is at all satisfactory.

[112] Adam Bremensis, "De Situ Daniæ," p. 13. (Elzevir edit.)

several vicissitudes, it became independent of any sovereign but the emperor in the thirteenth century. Hamburg and Bremen, upon the other side of the Cimbric peninsula, emulated the prosperity of Lubec; the former city purchased independence of its bishop in 1225. A colony from Bremen founded Riga in Livonia about 1162. The city of Dantzic grew into importance about the end of the following century. Königsberg was founded by Ottocar, King of Bohemia, in the same age.

But the real importance of these cities is to be dated from their famous union into the Hanseatic confederacy. The origin of this is rather obscure, but it may certainly be nearly referred in point of time to the middle of the thirteenth century,[113] and accounted for by the necessity of mutual defence, which piracy by sea and pillage by land had taught the merchants of Germany. The nobles endeavoured to obstruct the formation of this league, which, indeed, was in great measure designed to withstand their exactions. It powerfully maintained the influence which the free imperial cities were at this time acquiring. Eighty of the most considerable places constituted the Hanseatic confederacy, divided into four colleges, whereof Lubec, Cologne, Brunswick, and Dantzic were the leading towns. Lubec held the chief rank, and became, as it were, the patriarchal see of the league, whose province it was to preside in all general discussions for mercantile, political, or military purposes, and to carry them into execution. The league had four principal factories in foreign parts, at London, Bruges, Bergen, and Novgorod, endowed by the sovereigns of those cities with considerable privileges, to which every merchant belonging to a Hanseatic town was entitled.[114] In England the German guildhall or factory was established by concession of Henry III; and in later periods the Hanse traders were favoured above many others in the capricious vacillations of our mercantile policy.[115] The English had also their factories on the Baltic coast as far as Prussia and in the dominions of Denmark.[116]

This opening of a northern market powerfully accelerated the growth of our own commercial opulence, especially after the woollen manufacture had begun to thrive. From about the middle of the fourteenth century we find continual evidences of a rapid increase in wealth. Thus, in 1363, Picard, who had been lord mayor some years before, entertained Edward III and the Black Prince, the Kings of France, Scotland, and Cyprus, with many of the nobility, at his own house in the Vintry, and pre-

[113] Schmidt, tome iv, p. 8. Macpherson, p. 392. The latter writer thinks they were not known by the name of Hanse so early.

[114] Pfeffel, tome i, p. 443; Schmidt, tome iv, p. 18; tome v, p. 512; Macpherson's "Annals," vol. i, p. 693.

[115] Macpherson, vol. i, passim.

[116] Rymer, tome viii, p. 360.

sented them with handsome gifts.[117] Philpot, another eminent citizen in Richard II's time, when the trade of England was considerably annoyed by privateers, hired one thousand armed men and despatched them to sea, where they took fifteen Spanish vessels with their prizes.[118] We find Richard obtaining a great deal from private merchants and trading towns. In 1379 he got five thousand pounds from London, one thousand marks from Bristol, and in proportion from smaller places. In 1386 London gave four thousand pounds more, and ten thousand marks in 1397.[119] The latter sum was obtained also for the coronation of Henry VI.[120] Nor were the contributions of individuals contemptible, considering the high value of money. Hinde, a citizen of London, lent to Henry IV two thousand pounds in 1407, and Whittington one half of that sum. The merchants of the staple advanced four thousand pounds at the same time.[121] Our commerce continued to be regularly and rapidly progressive during the fifteenth century. The famous Canynges of Bristol, under Henry VI and Edward IV, had ships of nine hundred tons burden.[122] The trade and even the internal wealth of England reached so much higher a pitch in the reign of the last-mentioned king than at any former period that we may perceive the wars of York and Lancaster to have produced no very serious effect on national prosperity. Some battles were doubtless sanguinary; but the loss of lives in battle is soon repaired by a flourishing nation, and the devastation occasioned by armies was both partial and transitory.

A commercial intercourse between these northern and southern regions of Europe began about the early part of the fourteenth century, or, at most, a little sooner. Until, indeed, the use of the magnet was thoroughly understood, and a competent skill in marine architecture, as well as navigation, acquired, the Italian merchants were scarce likely to attempt a voyage perilous in itself and rendered more formidable by the imaginary difficulties which had been supposed to attend an expedition beyond the Straits of Hercules. But the English, accustomed to their own rough seas, were always more intrepid, and probably more skilful navigators. Though it was extremely rare, even in the fifteenth century, for an English trading vessel to appear in the Mediterranean,[123] yet a famous military armament, that destined

[117] Macpherson (who quotes Stow), p. 415.

[118] Walsingham, p. 211.

[119] Rymer, tome vii, pp. 210, 341; tome viii, p. 9.

[120] Rymer, tome x, p. 461.

[121] Rymer, tome viii, p. 488.

[122] Macpherson, p. 667.

[123] Richard III, in 1485, appointed a Florentine merchant to be English consul at Pisa, on the ground that some of his subjects intended to trade to Italy. (Macpherson, p. 705, from Rymer.) Perhaps we can not positively prove the existence of a Mediterranean trade at an earlier time: and even this instrument is not conclusive. But a considerable presumption arises from two documents in Rymer, of the year 1412, which inform us of a great shipment of wool and other

for the crusade of Richard I, displayed at a very early time the seamanship of our countrymen. In the reign of Edward II we find mention in Rymer's collection of Genoese ships trading to Flanders and England. His son was very solicitous to preserve the friendship of that opulent republic; and it is by his letters to his senate, or by royal orders restoring ships unjustly seized, that we come by a knowledge of those facts which historians neglect to relate. Pisa shared a little in this traffic, and Venice more considerably; but Genoa was beyond all competition at the head of Italian commerce in these seas during the fourteenth century. In the next her general decline left it more open to her rival, but I doubt whether Venice ever maintained so strong a connection with England. Through London and Bruges, their chief station in Flanders, the merchants of Italy and of Spain transported Oriental produce to the farthest parts of the North. The inhabitants of the Baltic coast were stimulated by the desire of precious luxuries which they had never known; and these wants, though selfish and frivolous, are the means by which nations acquire civilization, and the earth is rendered fruitful of its produce. As the carriers of this trade the Hanseatic merchants resident in England and Flanders derived profits through which eventually, of course, those countries were enriched. It seems that the Italian vessels unloaded at the marts of London or Bruges, and that such parts of their cargoes as were intended for a more northern trade came there into the hands of the German merchants. In the reign of Henry VI England carried on a pretty extensive traffic with the countries around the Mediterranean, for whose commodities her wool and woollen cloths enabled her to pay.

The commerce of the southern division, though it did not, I think, produce more extensively beneficial effects upon the progress of society, was both earlier and more splendid than that of England and the neighbouring countries. Besides Venice, which has been mentioned already, Amalfi kept up the commercial intercourse of Christendom with the Saracen countries before the first crusade.[124] It was the singular fate of this city

goods made by some merchants of London for the Mediterranean, under supercargoes, whom, it being a new undertaking, the king expressly recommended to the Genoese republic. But that people, impelled probably by commercial jealousy, seized the vessels and their cargoes; which induced the king to grant the owners letters of reprisal against all Genoese property. (Rymer, tome viii, pp. 717, 773.) Though it is not perhaps evident that the vessels were English, the circumstances render it highly probable. The bad success, however, of this attempt might prevent its imitation. A Greek author about the beginning of the fifteenth century reckons the Ἰγγλιτοι among the nations who traded to a port in the Archipelago. (Gibbon, vol. xii, p. 52.) But these enumerations are generally swelled by vanity or the love of exaggeration; and a few English sailors on board a foreign vessel would justify the assertion. Benjamin of Tudela, a Jewish traveller, pretends that the port of Alexandria, about 1160, contained vessels not only from England, but from Russia, and even Cracow. (Harris's "Voyages," vol. i, p. 554.)

[124] The Amalfitans are thus described

to have filled up the interval between two periods of civilization, in neither of which she was destined to be distinguished. Scarcely known before the end of the sixth century, Amalfi ran a brilliant career, as a free and trading republic, which was checked by the arms of a conqueror in the middle of the twelfth. Since her subjugation by Roger, King of Sicily, the name of a people who for a while connected Europe with Asia has hardly been repeated, except for two discoveries falsely imputed to them—those of the "Pandects" and of the compass.

But the decline of Amalfi was amply compensated to the rest of Italy by the constant elevation of Pisa, Genoa, and Venice in the twelfth and ensuing ages. The crusades led immediately to this growing prosperity of the commercial cities. Besides the profit accruing from so many naval armaments which they supplied, and the continual passage of private adventurers in their vessels, they were enabled to open a more extensive channel of Oriental traffic than had hitherto been known. These three Italian republics enjoyed immunities in the Christian principalities of Syria, possessing separate quarters in Acre, Tripoli, and other cities, where they were governed by their own laws and magistrates. Though the progress of commerce must, from the condition of European industry, have been slow, it was uninterrupted; and the settlements in Palestine were becoming important as factories, a use of which Godfrey and Urban little dreamed when they were lost through the guilt and imprudence of their inhabitants.[125] Villani laments the injury sustained by commerce in consequence of the capture of Acre, "situated, as it was, on the coast of the Mediterranean, in the centre of Syria, and, as we might say, of the habitable world, a haven for all merchandise, both from the East and the West, which all the nations of the earth frequented for this trade."[126] But the loss was soon

by William of Apulia, apud Muratori, "Dissert. 30":

"Urbs hæc dives opum, populoque referta videtur,
Nulla magis locuples argento, vestibus, auro.
Partibus innumeris ac plurimus urbe moratur
Nauta, maris cœlique vias aperire peritus.
Huc et Alexandri diversa feruntur ab urbe,
Regis et Antiochi. Hæc [etiam?] freta plurima transit.
Hic Arabes, Indi, Siculi noscuntur, et Afri.
Hæc gens est totum prope nobilitata per orbem.
Et mercanda ferens, et amans mercata referre."

[There must be, I suspect, some exaggeration about the commerce and opulence of Amalfi, in the only age when she possessed any at all. The city could never have been considerable, as we may judge from its position immediately under a steep mountain; and what is still more material, has a very small port. According to our notions of trade, she could never have enjoyed much; the lines quoted from William of Apulia are to be taken as a poet's panegyric. It is of course a question of degree; Amalfi was no doubt a commercial republic to the extent of her capacity; but those who have ever been on the coast must be aware how limited that was. At present she has, I believe, no foreign trade at all. 1848.]

[125] The inhabiants of Acre were noted, in an age not very pure, for the excess of their vices. In 1291 they plundered some of the subjects of a neighbouring Mohammedan prince, and, refusing reparation, the city was besieged and taken by storm. (Muratori, ad ann. Gibbon, c. 59.)

[126] Villani, l. vii, c. 144.

retrieved, not perhaps by Pisa and Genoa, but by Venice, who formed connections with the Saracen governments, and maintained her commercial intercourse with Syria and Egypt by their license, though subject probably to heavy exactions. Sanuto, a Venetian author at the beginning of the fourteenth century, has left a curious account of the Levant trade which his countrymen carried on at that time. Their imports it is easy to guess, and it appears that timber, brass, tin, and lead, as well as the precious metals, were exported to Alexandria, besides oil, saffron, and some of the productions of Italy, and even wool and woollen cloths.[127] The European side of the account had therefore become respectable.

The commercial cities enjoyed as great privileges at Constantinople as in Syria, and they bore an eminent part in the vicissitudes of the Eastern Empire. After the capture of Constantinople by the Latin crusaders, the Venetians, having been concerned in that conquest, became, of course, the favoured traders under the new dynasty, possessing their own district in the city, with their magistrate or podestà, appointed at Venice, and subject to the parent republic. When the Greeks recovered the seat of their empire, the Genoese, who, from jealousy of their rivals, had contributed to that revolution, obtained similar immunities. This powerful and enterprising state, in the fourteenth century, sometimes the ally, sometimes the enemy, of the Byzantine court, maintained its independent settlement at Pera. From thence she spread her sails into the Euxine, and, planting a colony at Caffa in the Crimea, extended a line of commerce with the interior regions of Asia, which even the skill and spirit of our own times have not yet been able to revive.[128]

The French provinces which border on the Mediterranean Sea partook in the advantages which it offered. Not only Marseilles, whose trade had continued in a certain degree throughout the worst ages, but Narbonne, Nismes, and especially Montpelier,

[127] Macpherson, p. 490.

[128] Capmany, "Memorias Historicas," tome iii, preface, p. 11; and part 2, p. 131. His authority is Balducci Pegalotti, a Florentine writer upon commerce about 1340, whose work I have never seen. It appears from Balducci that the route to China was from Azof to Astrakhan, and thence, by a variety of places which can not be found in modern maps, to Cambalu, probably Peking, the capital city of China, which he describes as being one hundred miles in circumference. The journey was of rather more than eight months, going and returning; and he assures us it was perfectly secure, not only for caravans, but for a single traveller with a couple of interpreters and a servant. The Venetians had also a settlement in the Crimea, and appear, by a passage in Petrarch's letters, to have possessed some of the trade through Tartary. In a letter written from Venice, after extolling in too rhetorical a manner the commerce of that republic, he mentions a particular ship that had just sailed for the Black Sea. Et ipsa quidem Tanaim it visura, nostri enim maris navigatio non ultra tenditur; eorum vero aliqui, quos hæc fert, illic iter [instituent] eam egressuri, nec antea substituri, quàm Gange et Caucaso superato, ad Indos atque extremos Seres et Orientalem perveniatur Oceanum. En quo ardens et inexplebilis habendi sitis hominum mentes rapit! "Petrarcæ Opera, Senil.," l. ii, ep. 3, p. 760, edit. 1581.

were distinguished for commercial prosperity.[129] A still greater activity prevailed in Catalonia. From the middle of the thirteenth century (for we need not trace the rudiments of its history) Barcelona began to emulate the Italian cities in both the branches of naval energy, war and commerce. Engaged in frequent and severe hostilities with Genoa, and sometimes with Constantinople, while their vessels traded to every part of the Mediterranean, and even of the English Channel, the Catalans might justly be reckoned among the first of maritime nations. The commerce of Barcelona has never since attained so great a height as in the fifteenth century.[130]

The introduction of a silk manufacture at Palermo, by Roger Guiscard in 1148, gave perhaps the earliest impulse to the industry of Italy. Nearly about the same time the Genoese plundered two Moorish cities of Spain, from which they derived the same art. In the next age this became a staple manufacture of the Lombard and Tuscan republics, and the cultivation of mulberries was enforced by their laws.[131] Woollen stuffs, though the trade was perhaps less conspicuous than that of Flanders, and though many of the coarser kinds were imported from thence, employed a multitude of workmen in Italy, Catalonia, and the south of France.[132] Among the trading companies into which the middling ranks were distributed, those concerned in silk and woollens were most numerous and honourable.[133]

A property of a natural substance, long overlooked, even though it attracted observation by a different peculiarity, has influenced by its accidental discovery the fortunes of mankind more than all the deductions of philosophy. It is, perhaps, impossible to ascertain the epoch when the polarity of the magnet was first known in Europe. The common opinion, which ascribes its discovery to a citizen of Amalfi in the fourteenth century, is undoubtedly erroneous. Guiot de Provins, a French poet, who lived about the year 1200, or, at the latest under St. Louis, describes it in the most unequivocal language. James de Vitry, a bishop in Palestine, before the middle of the thirteenth century,

[129] "Hist. de Languedoc," tome iii, p. 531; tome iv, p. 517. ("Mém. de l'Acad. des Inscriptions," tome xxxvii.)

[130] Capmany, "Memorias Historicas de Barcelona," tome i, part 2. See particularly p. 36.

[131] Muratori, "Dissert. 30." Denina, "Rivoluzione d' Italia," l. xiv, c. 11. The latter writer is of opinion that mulberries were not cultivated as an important object till after 1300, nor even to any great extent till after 1500; the Italian manufacturers buying most of their silk from Spain or the Levant.

[132] The history of Italian states, and especially Florence, will speak for the first country; Capmany attests the woollen manufacture of the second ("Mem. Hist. de Barcel.," tome i, part 3, p. 7, etc.); and Vaissette that of Carcassonne and its vicinity ("Hist. de Lang.," tome iv, p. 517).

[133] None were admitted to the rank of burgesses in the towns of Aragon who used any manual trade, with the exception of dealers in fine cloths. The woollen manufacture of Spain did not at any time become a considerable article of export, nor even supply the internal consumption, as Capmany has well shown ("Memorias Historicas," tome iii, p. 325 et seq., and "Edinburgh Review," vol. x.)

and Guido Guinizzelli, an Italian poet of the same time, are equally explicit. The French, as well as Italians, claim the discovery as their own; but whether it were due to either of these nations, or rather learned from their intercourse with the Saracens, is not easily to be ascertained.[184] For some time, perhaps, even this wonderful improvement in the art of navigation might not be universally adopted by vessels sailing within the Mediterranean, and accustomed to their old system of observations. But when it became more established, it naturally inspired a more fearless spirit of adventure. It was not, as has been mentioned, till the beginning of the fourteenth century that the Genoese and other nations around that inland sea steered into the Atlantic Ocean toward England and Flanders. This intercourse with the northern countries enlivened their trade with the Levant by the exchange of productions which Spain and Italy do not supply, and enriched the merchants by means of whose capital the exports of London and of Alexandria were conveyed into each other's harbours.

The usual risks of navigation, and those incident to commercial adventure, produce a variety of questions in every system of jurisprudence, which, though always to be determined, as far as possible, by principles of natural justice, must in many cases depend upon established customs. These customs of maritime law were anciently reduced into a code by the Rhodians, and the Roman emperors preserved or reformed the constitutions of that republic. It would be hard to say how far the tradition of this early jurisprudence survived the decline of commerce in the darker ages; but after it began to recover itself,

[184] Boucher, the French translator of Il Consolato del Mare, says that Edrissi, a Saracen geographer who lived about 1100, gives an account, though in a confused manner, of the polarity of the magnet, tome ii, p. 280. However, the lines of Guiot de Provins are decisive. These are quoted in "Hist. Littéraire de la France," tome ix, p. 199; "Mém. de l'Acad. des Inscrip.," tome xxi, p. 192; and several other works. Guinizzelli has the following passage, in a canzone quoted by Ginguené, "Hist. Littéraire de l'Italie," tome i, p. 413:

"In quelle parti sotto tramontana,
Sono li monti della calamita,
Che dan virtute all' aere
Di trarre il ferro; ma perchè lontana,
Vole di simil pietra aver aita,
A far la adoperare,
E dirizzar lo ago in ver la stella."

We can not be diverted, by the nonsensical theory these lines contain, from perceiving the positive testimony of the last verse to the poet's knowledge of the polarity of the magnet. But if any doubt could remain, Tiraboschi (tome iv, p. 171) has fully established, from a series of passages, that this phenomenon was well known in the thirteenth century; and puts an end altogether to the pretensions of Flavio Gioja, if such a person ever existed. See also Macpherson's "Annals," pp. 364 and 418. It is provoking to find a historian like Robertson asserting, without hesitation, that this citizen of Amalfi was the inventor of the compass, and thus accrediting an error which had already been detected.

It is a singular circumstance, and only to be explained by the obstinacy with which men are apt to reject improvement, that the magnetic needle was not generally adopted in navigation till very long after the discovery of its properties, and even after their peculiar importance had been perceived. The writers of the thirteenth century, who mention the polarity of the needle, mention also its use in navigation; yet Capmany has found no distinct proof of its employment till 1403, and does not believe that it was frequently on board Mediterranean ships at the latter part of the preceding age. ("Memorias Historicas," tome iii, p. 70.) Perhaps, however, he has inferred too much from his negative proof; and this subject seems open to further inquiry.

necessity suggested, or recollection prompted, a scheme of regulations resembling in some degree, but much more enlarged than those of antiquity. This was formed into a written code, "Il Consolato del Mare," not much earlier probably than the middle of the thirteenth century; and its promulgation seems rather to have proceeded from the citizens of Barcelona than from those of Pisa or Venice, who have also claimed to be the first legislators of the sea.[125] Besides regulations simply mercantile, this system has defined the mutual rights of neutral and belligerent vessels, and thus laid the basis of the positive law of nations in its most important and disputed cases. The King of France and Count of Provence solemnly acceded to this maritime code, which hence acquired a binding force within the Mediterranean Sea; and in most respects the law merchant of Europe is at present conformable to its provisions. A set of regulations, chiefly borrowed from the "Consolato," was compiled in France under the reign of Louis IX, and prevailed in their own country. These have been denominated the laws of Oleron, from an idle story that they were enacted by Richard I while his expedition to the Holy Land lay at anchor in that island.[126] Nor was the North without its peculiar code of maritime jurisprudence—namely, the "Ordinances of Wisbuy," a town in the isle of Gothland, principally compiled from those of Oleron, before the year 1400, by which the Baltic traders were governed.[127]

There was abundant reason for establishing among maritime nations some theory of mutual rights, and for securing the redress of injuries, as far as possible, by means of acknowledged tribunals. In that state of barbarous anarchy which so long resisted the coercive authority of civil magistrates, the sea held out even more temptation and more impunity than the land; and when the laws had regained their sovereignty, and neither

[125] Boucher supposes it to have been compiled at Barcelona about 900; but his reasonings are inconclusive (tome i, p. 72); and, indeed, Barcelona at that time was little, if at all, better than a fishing-town. Some arguments might be drawn in favour of Pisa from the expressions of Henry IV's charter granted to that city in 1081. Consuetudines, quas habent de mari, sic iis observabimus sicut illorum est consuetudo. Muratori, "Dissert." 45. Giannone seems to think the collection was compiled about the reign of Louis IX, l. xi, c. 6. Capmany, the last Spanish editor, whose authority ought perhaps to outweigh every other, asserts and seems to prove them to have been enacted by the mercantile magistrates of Barcelona, under the reign of James the Conqueror, which is much the same period. ("Codigo de las Costumbres Maritimas de Barcelona," Madrid, 1791.) But, by whatever nation they were reduced into their present form, these laws were certainly the ancient and established usages of the Mediterranean states; and Pisa may very probably have taken a great share in first practising what a century or two afterward was rendered more precise at Barcelona.

[126] Macpherson, p. 358. Boucher supposes them to be registers of actual decisions.

[127] I have only the authority of Boucher for referring the "Ordinances of Wisbuy" to the year 1400. Beckman imagines them to be older than those of Oleron. But Wisbuy was not inclosed by a wall till 1288, a proof that it could not have been previously a town of much importance. It flourished chiefly in the first part of the fourteenth century, and was at that time an independent republic, but fell under the yoke of Denmark before the end of the same age.

robbery nor private warfare was any longer tolerated, there remained that great common of mankind, unclaimed by any king, and the liberty of the sea was another name for the security of plunderers. A pirate, in a well-armed, quick-sailing vessel must feel, I suppose, the enjoyments of his exemption from control more exquisitely than any other freebooter; and darting along the bosom of the ocean, under the impartial radiance of the heavens, may deride the dark concealments and hurried flights of the forest robber. His occupation is, indeed, extinguished by the civilization of later ages, or confined to distant climates. But in the thirteenth and fourteenth centuries a rich vessel was never secure from attack; and neither restitution nor punishment of the criminals was to be obtained from governments who sometimes feared the plunderer and sometimes connived at the offence.[138] Mere piracy, however, was not the only danger. The maritime towns of Flanders, France, and England, like the free republics of Italy, prosecuted their own quarrels by arms, without asking the leave of their respective sovereigns. This practice, exactly analogous to that of private war in the feudal system, more than once involved the Kings of France and England in hostility.[139] But where the quarrel did not proceed to such a length as absolutely to engage two opposite towns, a modification of this ancient right of revenge formed part of the regular law of nations, under the name of reprisals. Whoever was plundered or injured by the inhabitant of another town obtained authority from his own magistrates to seize the property of any other person belonging to it, until his loss should be compensated. This law of reprisal was not confined to maritime places; it prevailed in Lombardy, and probably in the German cities. Thus, if a citizen of Modena was robbed by a Bolognese, he complained to the magistrates of the former city, who represented the case to those of Bologna, demanding redress. If this were not immediately granted, letters of reprisals were issued to plunder the territory of Bologna till the injured party should be reimbursed by sale of the spoil.[140] In the laws of Marseilles it is declared, "If a foreigner take anything from a citizen of Marseilles, and he who has jurisdiction over the said debtor or unjust taker does not cause right to be done in the same, the rector or consuls, at the petition of the said citizen, shall grant him reprisals upon all the goods of the said debtor or

[138] Hugh Despenser seized a Genoese vessel valued at 14,300 marks, for which no restitution was ever made. (Rym., tome iv, p. 701; Macpherson, A. D. 1336.)

[139] The Cinque Ports and other trading towns of England were in a constant state of hostility with their opposite neighbours during the reigns of Edward I and II. One might quote almost half the instruments in Rymer in proof of these conflicts, and of those with the mariners of Norway and Denmark. Sometimes mutual envy produced frays between different English towns. Thus, in 1254 the Winchelsea mariners attacked a Yarmouth galley and killed some of her men. (Matt. Paris, apud Macpherson.)

[140] Muratori, "Dissert." 53.

unjust taker, and also upon the goods of others who are under the jurisdiction of him who ought to do justice, and would not, to the said citizen of Marseilles." [141] Edward III remonstrates, in an instrument published by Rymer, against letters of marque granted by the King of Aragon to one Berenger de la Tone, who had been robbed by an English pirate of two thousand pounds, alleging that, inasmuch as he had always been ready to give redress to the party, it seemed to his counsellors that there was no just cause for reprisals upon the king's or his subjects' property.[142] This passage is so far curious as it asserts the existence of a customary law of nations, the knowledge of which was already a sort of learning. Sir E. Coke speaks of this right of private reprisals as if it still existed; [143] and, in fact, there are instances of granting such letters as late as the reign of Charles I.

A practice, founded on the same principles as reprisal, though rather less violent, was that of attaching the goods or persons of resident foreigners for the debts of their countrymen. This, indeed, in England was not confined to foreigners until the statute of Westminster I, c. 23, which enacts that "no stranger who is of this realm shall be distrained in any town or market for a debt wherein he is neither principal nor surety." Henry III had previously granted a charter to the burgesses of Lubec, that they should "not be arrested for the debt of any of their countrymen, unless the magistrates of Lubec neglected to compel payment." [144] But by a variety of grants from Edward II the privileges of English subjects under the statute of Westminster were extended to most foreign nations.[145] This unjust responsibility had not been confined to civil cases. One of a company of Italian merchants, the Spini, having killed a man, the officers of justice seized the bodies and effects of all the rest.[146]

If under all these obstacles, whether created by barbarous manners, by national prejudice, or by the fraudulent and arbitrary measures of princes, the merchants of different countries became so opulent as almost to rival the ancient nobility, it must be ascribed to the greatness of their commercial profits. The trading companies possessed either a positive or a virtual monopoly, and held the keys of those Eastern regions, for the luxuries of which the progressive refinement of manners pro-

[141] Du Cange, voc. Laudum.

[142] Rymer, tome iv, p. 576. Videtur sapientibus et peritis, quod causa, de jure, non subfuit marcham seu reprisaliam in nostris, seu subditorum nostrorum, bonis concedendi. See, too, a case of neutral goods on board an enemy's vessel claimed by the owners, and a legal distinction taken in favour of the captors (tome vi, p. 14).

[143] 27 E. III, stat. ii, c. 17, 2 Inst., p. 205.

[144] Rymer, tome i, p. 839.

[145] Idem, tome iii, pp. 458, 647, 678, et infra. See too the ordinances of the staple, in 27 Edward III, which confirm this among other privileges, and contain manifold evidence of the regard paid to commerce in that reign.

[146] Rymer, tome ii, p. 891. Madox, "Hist. Exchequer," c. xxii, s. 7.

duced an increasing demand. It is not easy to determine the average rate of profit,[147] but we know that the interest of money was exceedingly high throughout the middle ages. At Verona, in 1228, it was fixed by law at twelve and a half per cent; at Modena, in 1270, it seems to have been as high as twenty.[148] The republic of Genoa, toward the end of the fourteenth century, when Italy had grown wealthy, paid only from seven to ten per cent to her creditors.[149] But in France and England the rate was far more oppressive. An ordinance of Philip the Fair, in 1311, allows twenty per cent after the first year of the loan.[150] Under Henry III, according to Matthew Paris, the debtor paid ten per cent every two months;[151] but this is absolutely incredible as a general practice. This was not merely owing to scarcity of money, but to the discouragement which a strange prejudice opposed to one of the most useful and legitimate branches of commerce. Usury, or lending money for profit, was treated as a crime by the theologians of the middle ages; and though the superstition has been eradicated, some part of the prejudice remains in our legislation. This trade in money, and indeed a great part of inland trade in general, had originally fallen to the Jews, who were noted for their usury so early as the sixth century.[152] For several subsequent ages they continued to employ their capital and industry to the same advantage, with little molestation from the clergy, who always tolerated their avowed and national infidelity, and often with some encouragement from princes. In the twelfth century we find them not only possessed of landed property in Languedoc, and cultivating the studies of medicine and Rabbinical literature in their own academy at Montpelier, under the protection of the Count of Toulouse, but invested with civil offices.[153] Raymond Roger, Viscount of Carcasonne, directs a writ "to his bailiffs, Christian and Jewish."[154] It was one of the conditions imposed by the Church on the Count of Toulouse that he should allow no Jews to possess magistracy in his dominions.[155] But in Spain they were placed by some of the municipal laws on the footing of Christians, with respect to the composition for their lives, and seem in no other European country to have been so numerous or considerable.[156] The diligence and expertness of this people in all pecuniary dealings recommended them to princes who were

[147] In the remarkable speech of the Doge Mocenigo, quoted in another place, vol. i, p. 268, the annual profits made by Venice on her mercantile capital is reckoned at forty per cent.

[148] Muratori, "Dissert." 16.

[149] Bizarri, "Hist. Genuens.," p. 797. The rate of discount on bills, which may not have exactly corresponded to the average annual interest of money, was ten per cent at Barcelona in 1435. (Capmany, tome i, p. 209.)

[150] Du Cange, v. Usura.

[151] Muratori, "Diss." 16.

[152] Greg. Turon., l. iv.

[153] "Hist. de Languedoc," tome ii, p. 517; tome iii, p. 531.

[154] Id., tome iii, p. 121.

[155] Id., p. 163.

[156] Marina, "Ensayo Hist.-Crit.," p. 143.

solicitous about the improvement of their revenue. We find an article in the general charter of privileges granted by Peter III of Aragon, in 1283, that no Jew should hold the office of a bayle or judge. And two Kings of Castile, Alonzo XI and Peter the Cruel, incurred much odium by employing Jewish ministers in their treasury. But, in other parts of Europe, their condition had, before that time, begun to change for the worse—partly from the fanatical spirit of the crusades, which prompted the populace to massacre, and partly from the jealousy which their opulence excited. Kings, in order to gain money and popularity at once, abolished the debts due to the children of Israel, except a part which they retained as the price of their bounty. One is at a loss to conceive the process of reasoning in an ordinance of St. Louis, where, "for the salvation of his own soul and those of his ancestors, he releases to all Christians a third part of what was owing by them to Jews." [157] Not content with such edicts, the Kings of France sometimes banished the whole nation from their dominions, seizing their effects at the same time; and a season of alternative security and toleration continued till, under Charles VI, they were finally expelled from the kingdom, where they never afterward possessed any legal settlement.[158] They were expelled from England under Edward I, and never obtained any legal permission to reside till the time of Cromwell. This decline of the Jews was owing to the transference of their trade in money to other hands. In the early part of the thirteenth century the merchants of Lombardy and of the south of France [159] took up the business of remitting money by bills of exchange [160] and of making profit upon loans. The utility of this was found so great, especially by the Italian clergy, who thus in an easy manner drew the income of their transalpine benefices, that in spite of much obloquy the Lombard usurers established themselves in every country, and the general progress of commerce wore off the bigotry that had obstructed their reception. A distinction was made between moderate and exorbitant interest; and though the casuists did not acquiesce in this legal regulation,

[157] "Martenne Thesaurus Anecdotorum," tome i, p. 984.

[158] Velly, tome iv, p. 136.

[159] The city of Cahors, in Quercy, the modern department of the Lot, produced a tribe of money-dealers. The Caursini are almost as often noticed as the Lombards. See the article in Du Cange. In Lombardy, Asti, a city of no great note in other respects, was famous for the same department of commerce.

[160] There were three species of paper credit in the dealings of merchants: 1. General letters of credit, not directed to any one, which are not uncommon in the Levant; 2. Orders to pay money to a particular person; 3. Bills of exchange regularly negotiable. (Boucher, tome ii, p. 621.) Instances of the first are mentioned by Macpherson about 1200, p. 367. The second species was introduced by the Jews, about 1183 (Capmany, tome i, p. 297); but it may be doubtful whether the last stage of the progress was reached nearly so soon. An instrument in Rymer, however, of the year 1364 (tome vi, p. 495), mentions literæ cambitoriæ, which seem to have been negotiable bills; and by 1400 they were drawn in sets, and worded exactly as at present. Macpherson, p. 614, and Beckman, "History of Inventions," vol. iii, p. 430, give from Capmany an actual precedent of a bill dated in 1404.

yet it satisfied, even in superstitious times, the consciences of provident traders.[161] The Italian bankers were frequently allowed to farm the customs in England, as a security perhaps for loans which were not very punctually repaid.[162] In 1345 the Bardi at Florence, the greatest company in Italy, became bankrupt, Edward III owing them, in principal and interest, nine hundred thousand gold florins. Another, the Peruzzi, failed at the same time, being creditors to Edward for six hundred thousand florins. The King of Sicily owed one hundred thousand florins to each of these bankers. Their failure involved, of course, a multitude of Florentine citizens, and was a heavy misfortune to the state.[163]

The earliest bank of deposit, instituted for the accommodation of private merchants, is said to have been that of Barcelona, in 1401.[164] The banks of Venice and Genoa were of a different description. Although the former of these two has the advantage of greater antiquity, having been formed, as we are told, in the twelfth century, yet its early history is not so clear as that of Genoa, nor its political importance so remarkable, however similar might be its origin.[165] During the wars of Genoa in the fourteenth century, she had borrowed large sums of private citizens, to whom the revenues were pledged for repayment. The republic of Florence had set a recent though not a very encouraging example of a public loan, to defray the expense of her war against Mastino della Scala, in 1336. The chief mercantile firms, as well as individual citizens, furnished money on an assignment of the taxes, receiving fifteen per cent interest, which appears to have been above the rate of private usury.[166] The state was not unreasonably considered a worse debtor than some of her citizens, for in a few years these loans were consolidated into a general fund, or monte, with some deduction from the capital and a great diminution of interest, so that an original debt of

[161] Usury was looked upon with horror by our English divines long after the Reformation. Fleury, in his "Institutions au Droit Ecclésiastique," tome ii, p. 129, has shown the subterfuges to which men had recourse in order to evade this prohibition. It is an unhappy truth, that great part of the attention devoted to the best of sciences, ethics and jurisprudence, has been employed to weaken principles that ought never to have been acknowledged.

One species of usury, and that of the highest importance to commerce, was always permitted, on account of the risk that attended it. This was marine insurance, which could not have existed, until money was considered, in itself, as a source of profit. The earliest regulations on the subject of insurance are those of Barcelona in 1433; but the practice was, of course, earlier than these, though not of great antiquity. It is not mentioned in the "Consolato del Mare," nor in any of the Hanseatic laws of the fourteenth century. (Beckman, vol. i, p. 388.) This author, not being aware of the Barcelonese laws on this subject published by Capmany, supposes the first provisions regulating marine assurance to have been made at Florence in 1523.

[162] Macpherson, p. 487, et alibi. They had probably excellent bargains: in 1329 the Bardi farmed all the customs in England for 20*l.* a day. But in 1282 the customs had produced 8411*l.*, and half a century of great improvement had elapsed.

[163] Villani, l. xii, c. 55, 87. He calls these two banking-houses the pillars which sustained great part of the commerce of Christendom.

[164] Capmany, tome i, p. 213.

[165] Macpherson, p. 341, from Sanuto. The Bank of Venice is referred to 1171.

[166] G. Villani, l. xi, c. 49.

one hundred florins sold only for twenty-five.[167] But I have not found that these creditors formed at Florence a corporate body, or took any part, as such, in the affairs of the republic. The case was different at Genoa. As a security, at least, for their interest, the subscribers to public loans were permitted to receive the produce of the taxes by their own collectors, paying the excess into the treasury. The number and distinct classes of these subscribers becoming at length inconvenient, they were formed, about the year 1407, into a single corporation, called the Bank of St. George, which was from that time the sole national creditor and mortgagee. The government of this was intrusted to eight protectors. It soon became almost independent of the state. Every senator, on his admission, swore to maintain the privileges of the bank, which were confirmed by the Pope, and even by the emperor. The bank interposed its advice in every measure of government, and generally, as is admitted, to the public advantage. It equipped armaments at its own expense, one of which subdued the island of Corsica; and this acquisition, like those of our great Indian corporation, was long subject to a company of merchants, without any interference of the mother-country.[168]

The increasing wealth of Europe, whether derived from internal improvement or foreign commerce, displayed itself in more expensive consumption and greater refinements of domestic life. But these effects were for a long time very gradual, each generation making a few steps in the progress, which are hardly discernible except by an attentive inquirer. It is not till the latter half of the thirteenth century that an accelerated impulse appears to be given to society. The just government and suppression of disorder under St. Louis, and the peaceful temper of his brother Alfonso, Count of Toulouse and Poitou, gave France leisure to avail herself of her admirable fertility. England, that to a soil not greatly inferior to that of France united the inestimable advantage of an insular position, and was invigorated, above all, by her free constitution and the steady industriousness of her people, rose with a pretty uniform motion from the time of Edward I. Italy, though the better days of freedom had passed away in most of her republics, made a rapid transition from simplicity to refinement. "In those times," says a writer about the year 1300, speaking of the age of Frederick II, "the manners of the Italians were rude. A man and his wife ate off the same plate. There was no wooden-handled knives, nor more than one or two drinking cups in a house. Candles of wax or tallow were

[167] Matt. Villani, p. 227 (in Muratori, "Script. Rer. Ital.," tome xiv).
[168] Bizarri, "Hist. Genuens.," p. 797 (Antwerp, 1579); Machiavelli, "Storia Florentina," l. viii.

unknown; a servant held a torch during supper. The clothes of men were of leather unlined: scarcely any gold or silver was seen on their dress. The common people ate flesh but three times a week, and kept their cold meat for supper. Many did not drink wine in summer. A small stock of corn seemed riches. The portions of women were small; their dress, even after marriage, was simple. The pride of men was to be well provided with arms and horses; that of the nobility to have lofty towers, of which all the cities in Italy were full. But now frugality has been changed for sumptuousness; everything exquisite is sought after in dress; gold, silver, pearls, silks, and rich furs. Foreign wines and rich meats are required. Hence usury, rapine, fraud, tyranny," etc.[169] This passage is supported by other testimonies nearly of the same time. The conquest of Naples by Charles of Anjou in 1266 seems to have been the epoch of increasing luxury throughout Italy. His Provençal knights with their plumed helmets and golden collars, the chariot of his queen covered with blue velvet and sprinkled with lilies of gold, astonished the citizens of Naples.[170] Provence had enjoyed a long tranquility, the natural source of luxurious magnificence; and Italy, now liberated from the yoke of the empire, soon reaped the same fruit of a condition more easy and peaceful than had been her lot for several ages. Dante speaks of the change of manners at Florence from simplicity and virtue to refinement and dissoluteness in terms very nearly similar to those quoted above.[171]

Throughout the fourteenth century there continued to be a rapid but steady progression in England of what we may denominate elegance, improvement, or luxury; and if this was for a time suspended in France, it must be ascribed to the unusual calamities which befell that country under Philip of Valois and his son. Just before the breaking out of the English wars an excessive fondness for dress is said to have distinguished not only the higher ranks, but the burghers, whose foolish emula-

[169] Ricobaldus Ferrarensis, apud Murat., "Dissert." 23; Francisc. Pippinus, ibidem. Muratori endeavours to extenuate the authority of this passage, on account of some more ancient writers who complain of the luxury of their times, and of some particular instances of magnificence and expense. But Ricobaldi alludes, as Muratori himself admits, to the mode of living in the middle ranks, and not to that of courts, which in all ages might occasionally display considerable splendour. I see nothing to weaken so explicit a testimony of a contemporary, which in fact is confirmed by many writers of the next age, who, according to the practice of Italian chroniclers, have copied it as their own.

[170] Murat., "Dissert." 23.

[171] "Bellincion Berti vid' io andar cinto
Di cuojo e d' osso, e venir dallo specchio
La donna sua senza 'l viso dipinto,
E vidi quel di Nerli, e quel del Vecchio
Esser contenti alla pelle scoverta,
E sue donne al fuso ed al pennechio."
(Paradis., canto xv.)

See too the rest of this canto. But this is put in the mouth of Cacciaguida, the poet's ancestor, who lived in the former half of the twelfth century. The change, however, was probably subsequent to 1250, when the times of wealth and turbulence began at Florence.

tion at least indicates their easy circumstances.[172] Modes of dress hardly perhaps deserve our notice on their own account; yet so far as their universal prevalence was a symptom of diffused wealth, we should not overlook either the invectives bestowed by the clergy on the fantastic extravagances of fashion, or the sumptuary laws by which it was endeavoured to restrain them.

The principle of sumptuary laws was partly derived from the small republics of antiquity, which might perhaps require that security for public spirit and equal rights—partly from the austere and injudicious theory of religion disseminated by the clergy. These prejudices united to render all increase of general comforts odious under the name of luxury; and a third motive more powerful than either, the jealousy with which the great regard anything like imitation in those beneath them, co-operated to produce a sort of restrictive code in the laws of Europe. Some of these regulations are more ancient; but the chief part were enacted, both in France and England, during the fourteenth century, extending to expenses of the table as well as apparel. The first statute of this description in our own country was, however, repealed the next year;[173] and subsequent provisions were entirely disregarded by a nation which valued liberty and commerce too much to obey laws conceived in a spirit hostile to both. Laws, indeed, designed by those governments to restrain the extravagance of their subjects may well justify the severe indignation which Adam Smith has poured upon all such interference with private expenditure. The Kings of France and England were undoubtedly more egregious spendthrifts than any others in their dominions; and contributed far more by their love of pageantry to excite a taste for dissipation in their people than by their ordinances to repress it.

Mussus, a historian of Placentia, has left a pretty copious account of the prevailing manners among his countrymen about 1388, and expressly contrasts their more luxurious living with the style of their ancestors seventy years before, when, as we have seen, they had already made considerable steps toward refinement. This passage is highly interesting, because it shows the regular tenor of domestic economy in an Italian city rather than a mere display of individual magnificence, as in most of the facts collected by our own and the French antiquaries. But

[172] Velly, tome xiii, p. 352. The second continuator of Nangis vehemently inveighs against the long beards and short breeches of his age; after the introduction of which novelties, he judiciously observes, the French were much more disposed to run away from their enemies than before. ("Spicilegium," tome iii, p. 105.)

[173] 37 E. III, Rep. 38 E. III. Several other statutes of a similar nature were passed in this and the ensuing reign. In France there were sumptuary laws as old as Charlemagne, prohibiting or taxing the use of furs; but the first extensive regulation was under Philip the Fair. (Velly, tome vii, p. 64; tome xi, p. 190.) These attempts to restrain what can not be restrained continued even down to 1700. (De la Mare, "Traité de la Police," tome i, l. iii.)

it is much too long for insertion in this place.[174] No other country, perhaps, could exhibit so fair a picture of middle life: in France the burghers, and even the inferior gentry, were for the most part in a state of poverty at this period, which they concealed by an affectation of ornament; while our English yeomanry and tradesmen were more anxious to invigorate their bodies by a generous diet than to dwell in well-furnished houses, or to find comfort in cleanliness and elegance.[175] The German cities, however, had acquired with liberty the spirit of improvement and industry. From the time that Henry V admitted their artisans to the privileges of free burghers they became more and more prosperous,[176] while the steadiness and frugality of the German character compensated for some disadvantages arising out of their inland situation. Spire, Nuremberg, Ratisbon, and Augsburg were not indeed like the rich markets of London and Bruges, nor could their burghers rival the princely merchants of Italy; but they enjoyed the blessings of competence diffused over a large class of industrious freemen, and in the fifteenth century one of the politest Italians could extol their splendid and well-furnished dwellings, their rich apparel, their easy and affluent mode of living, the security of their rights and just equality of their laws.[177]

No chapter in the history of national manners would illustrate so well, if duly executed, the progress of social life as that dedicated to domestic architecture. The fashions of dress and of amusements are generally capricious and irreducible to rule; but every change in the dwellings of mankind, from the rudest

[174] Muratori, "Antichità Italiane," Dissert. 23, tome i, p. 325.

[175] "These English," said the Spaniards who came over with Philip II, "have their houses made of sticks and dirt, but they fare commonly so well as the king." (Harrison's "Description of Britain," prefixed to Holingshed, vol. i, p. 315, edit. 1807.)

[176] Pfeffel, tome i, p. 293.

[177] Æneas Sylvius, "De Moribus Germanorum." This treatise is an amplified panegyric upon Germany, and contains several curious passages; they must be taken perhaps with some allowance, for the drift of the whole is to persuade the Germans that so rich and noble a country could afford a little money for the poor Pope. Civitates quas vocant liberas, cum Imperatori solum subjiciuntur, cujus jugum est instar libertatis; nec profectò usquam gentium tanta libertas est, quantâ fruuntur hujuscemodi civitates. Nam populi quos Itali vocant liberos, hi potissimùm serviunt, sive Venetias inspectes, sive Florentiam aut Cænas, in quibus cives, præter paucos qui reliquos ducunt, loco mancipiorum habentur. Cum nec rebus suis uti, ut libet, vel fari quæ velint, et gravissimis opprimuntur pecuniarum exactionibus. Apud Germanos omnia læta sunt, omnia jucunda; nemo suis privatur bonis. Salvo cuique sua hæreditas est, nulli nisi nocenti magistratus nocent. Nec apud eos factiones sicut apud Italas urbes grassantur. Sunt autem supra centum civitates hâc libertate fruentes (p. 1058).

In another part of his work (p. 719) he gives a specious account of Vienna. The houses, he says, had glass windows and iron doors. Fenestræ undique vitreæ perlucent, et ostia plerumque ferrea. In domibus multa et munda supellex. Altæ domus magnificæque visuntur. Unum id dedecori est, quod tecta plerumque tigno contegunt, pauca latere. Cætera ædificia muro lapideo consistunt. Pictæ domus et exterius et interius splendent. Civitatis populus 50,000 communicantium creditur. I suppose this gives at least double for the total population. He proceeds to represent the manners of the city in a less favourable point of view, charging the citizens with gluttony and libertinism, the nobility with oppression, the judges with corruption, etc. Vienna probably had the vices of a flourishing city; but the love of amplification in so rhetorical a writer as Æneas Sylvius weakens the value of his testimony, on whichever side it is given.

wooden cabin to the stately mansion, has been dictated by some principle of convenience, neatness, comfort, or magnificence. Yet this most interesting field of research has been less beaten by our antiquaries than others comparatively barren. I do not pretend to a complete knowledge of what has been written by these learned inquirers, but I can only name one book in which the civil architecture of our ancestors has been sketched, loosely indeed, but with a superior hand, and another in which it is partially noticed. I mean by the first a chapter in the appendix to Dr. Whitaker's "History of Whalley," and by the second Mr. King's "Essay on Ancient Castles" in the "Archæologia."[178] Of these I shall make free use in the following paragraphs.

The most ancient buildings which we can trace in this island, after the departure of the Romans, were circular towers of no great size, whereof many remain in Scotland, erected either on a natural eminence or on an artificial mound of earth. Such are Conisborough Castle in Yorkshire and Castleton in Derbyshire, built, perhaps, according to Mr. King, before the conquest.[179] To the lower chambers of those gloomy keeps there was no admission of light or air except through long, narrow loop-holes and an aperture in the roof. Regular windows were made in the upper apartments. Were it not for the vast thickness of the walls, and some marks of attention both to convenience and decoration in these structures, we might be induced to consider them as rather intended for security during the transient inroad of an enemy than for a chieftain's usual residence. They bear a close resemblance, except by their circular form and more insulated situation, to the peels, or square towers of three or four stories, which are still found contiguous to ancient mansion houses, themselves far more ancient, in the northern counties,[180] and seem to have been designed for places of refuge.

In course of time the barons who owned these castles began to covet a more comfortable dwelling. The keep was either much enlarged or altogether relinquished as a place of residence except in time of siege, while more convenient apartments were sometimes erected in the tower of entrance, over the great gateway,

[178] Vols. iv and vi.

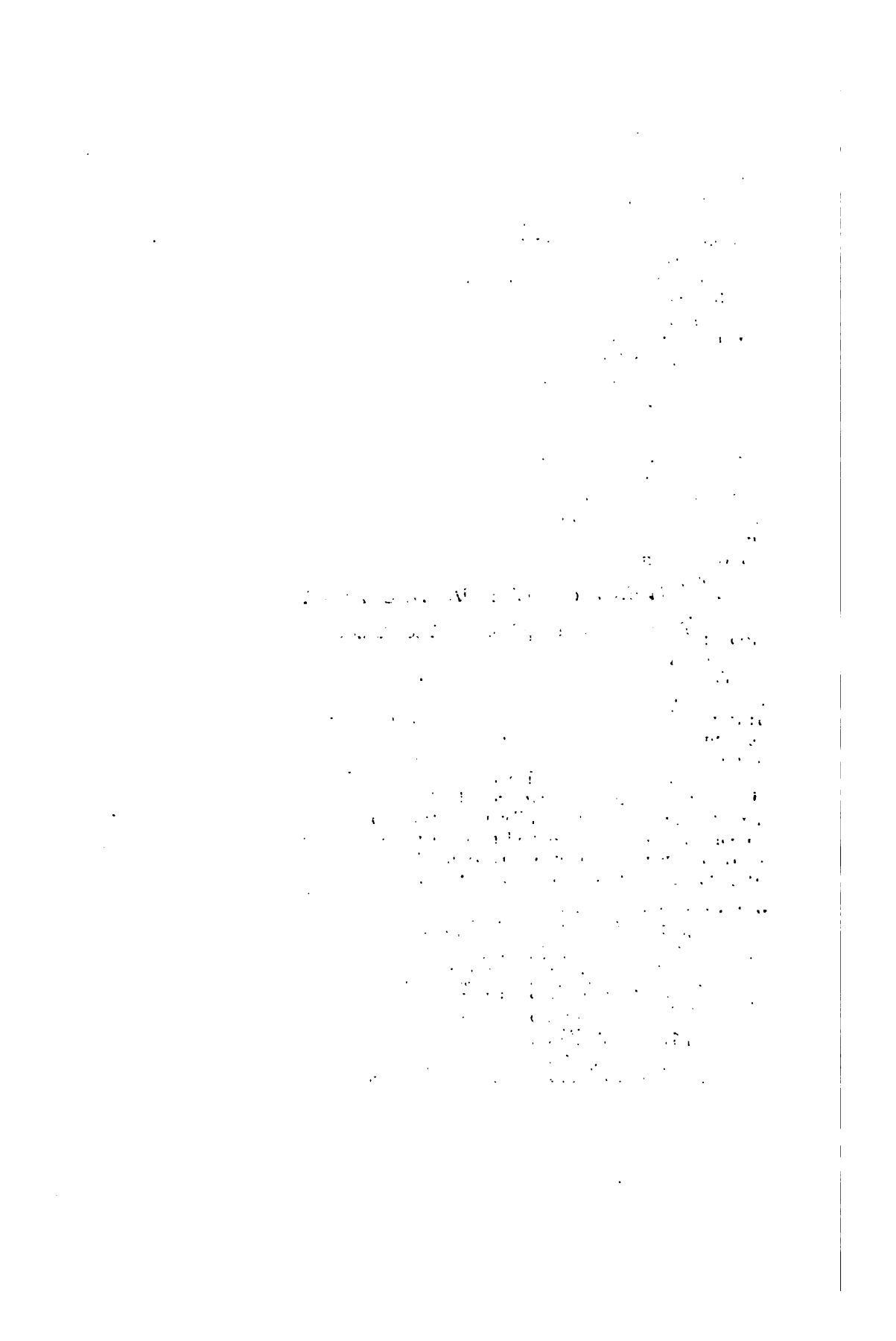
[179] Mr. Lysons refers Castleton to the age of William the Conqueror, but without giving any reasons. (Lysons's "Derbyshire," p. ccxxxvi.) Mr. King had satisfied himself that it was built during the Heptarchy, and even before the conversion of the Saxons to Christianity; but in this he gave the reins, as usual, to his imagination, which as much exceeded his learning as the latter did his judgment. Conisborough should seem, by the name, to have been a royal residence, which it certainly never was after the conquest. But if the engravings of the decorative parts in the "Archæologia," vol. vi, p. 244, are not remarkably inaccurate, the architecture is too elegant for the Danes, much more for the unconverted Saxons. Both these castles are inclosed by a court or ballium, with a fortified entrance, like those erected by the Normans.

[No doubt is now entertained but that Conisborough was built late in the Norman period. Mr. King's authority, which I followed for want of a better, is by no means to be depended upon. 1848.]

[180] Whitaker's "Hist. of Whalley"; Lysons's "Cumberland," p. ccvi.

A TAVERN OF THE MIDDLE AGES.

Photogravure from a painting by Albert Conrad.



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which led to the inner ballium or courtyard. Thus at Tunbridge Castle, this part of which is referred by Mr. King to the beginning of the thirteenth century, there was a room, twenty-eight feet by sixteen, on each side of the gateway; another above of the same dimensions, with an intermediate room over the entrance; and one large apartment on the second floor occupying the whole space, and intended for state. The windows in this class of castles were still little better than loop-holes on the basement story, but in the upper rooms often large and beautifully ornamented, though always looking inward to the court. Edward I introduced a more splendid and convenient style of castles, containing many habitable towers, with communicating apartments. Conway and Carnarvon will be familiar examples. The next innovation was the castle-palace—of which Windsor, if not quite the earliest, is the most magnificent instance. Alnwick, Naworth, Harewood, Spofforth, Kenilworth, and Warwick were all built upon this scheme during the fourteenth century, but subsequent enlargements have rendered caution necessary to distinguish their original remains. "The odd mixture," says Mr. King, "of convenience and magnificence with cautious designs for protection and defence, and with the inconveniences of the former confined plan of a close fortress, is very striking." The provisions for defence became now, however, little more than nugatory; large arched windows, like those of cathedrals, were introduced into halls, and this change in architecture manifestly bears witness to the cessation of baronial wars and the increasing love of splendour in the reign of Edward III.

To these succeeded the castellated houses of the fifteenth century, such as Herstmonceux in Sussex, Haddon Hall in Derbyshire, and the older part of Knowle in Kent.[181] They resembled fortified castles in their strong gateways, their turrets and battlements, to erect which a royal license was necessary; but their defensive strength could only have availed against a sudden affray or attempt at forcible dispossession. They were always built round one or two courtyards, the circumference of the first, when they were two, being occupied by the offices and servants' rooms, that of the second by the state apartments. Regular quadrangular houses, not castellated, were sometimes built during the same age, and under Henry VII became universal in the superior style of domestic architecture.[182] The quadrangular form, as well from security and convenience as from imitation of conventual houses, which were always constructed upon that model, was generally preferred—even where the dwelling-house, as indeed was usual, only took up one side of the inclosure, and

[181] The ruins of Herstmonceux are, I believe, tolerably authentic remains of Henry VI's age, but only a part of Haddon Hall is of the fifteenth century.

[182] "Archæologia," vol. vi.

the remaining three contained the offices, stables, and farm buildings, with walls of communication. Several very old parsonages appear to have been built in this manner.[183] It is, however, not very easy to discover any large fragments of houses inhabited by the gentry before the reign, at soonest, of Edward III, or even to trace them by engravings in the older topographical works, not only from the dilapidations of time, but because very few considerable mansions had been erected by that class. A great part of England affords no stone fit for building, and the vast though unfortunately not inexhaustible resources of her oak forests were easily applied to less durable and magnificent structures. A frame of massive timber, independent of walls and resembling the inverted hull of a large ship, formed the skeleton, as it were, of an ancient hall—the principal beams springing from the ground naturally curved, and forming a Gothic arch overhead. The intervals of these were filled up with horizontal planks; but in the earlier buildings, at least in some districts, no part of the walls was of stone.[184] Stone houses are, however, mentioned as belonging to citizens of London, even in the reign of Henry II;[185] and, though not often perhaps regularly hewn stones, yet those scattered over the soil or dug from flint quarries, bound together with a very strong and durable cement, were employed in the construction of manorial houses, especially in the western counties and other parts where that material is easily procured.[186] Gradually even in timber buildings the intervals of the main beams, which now became perpendicular, not throwing off their curved springers till they reached a considerable height, were occupied by stone walls, or where stone was expensive, by mortar or plaster, intersected by horizontal or diagonal beams, grooved into the principal piers.[187] This mode of building continued for a long time, and is still familiar to our eyes in the older streets of the metropolis and other towns, and in many parts of the country.[188] Early in the fourteenth century the art of building with brick, which had been lost since the Roman dominion, was introduced probably from Flanders. Though several edifices of that age are constructed with this material, it did not come into general use till the reign of Henry VI.[189] Many considerable houses as well as public buildings were erected with bricks during his reign and that of Edward

[183] Blomefield's "Norfolk," vol. iii, p. 242.

[184] Whitaker's "Hist. of Whalley."

[185] Littleton, tome iv, p. 130.

[186] Harrison says that few of the houses of the commonalty, except here and there in the west country towns, were made of stone (p. 314). This was about 1570.

[187] "Hist. of Whalley."

[188] "The ancient manors and houses of our gentlemen," says Harrison, "are yet, and for the most part, of strong timber, in framing whereof our carpenters have been and are worthily preferred before those of like science among all other nations. Howbeit such as are lately builded are either of brick or hard stone, or both" (p. 316).

[189] "Archæologia," vol. i, p. 143; vol. iv, p. 91.

IV, chiefly in the eastern counties, where the deficiency of stone was most experienced. Few, if any, brick mansion houses of the fifteenth century exist, except in a dilapidated state; but Queen's College and Clare Hall at Cambridge, and part of Eton College, are subsisting witnesses to the durability of the material as it was then employed.

It is an error to suppose that the English gentry were lodged in stately or even in well-sized houses. Generally speaking, their dwellings were almost as inferior to those of their descendants in capacity as they were in convenience. The usual arrangement consisted of an entrance passage running through the house, with a hall on one side, a parlour beyond, and one or two chambers above, and on the opposite side a kitchen, pantry, and other offices.[190] Such was the ordinary manor-house of the fifteenth and sixteenth centuries, as appears not only from the documents and engravings, but as to the latter period, from the buildings themselves, sometimes, though not very frequently, occupied by families of consideration, more often converted into farm-houses or distinct tenements. Larger structures were erected by men of great estates during the reigns of Henry IV and Edward IV, but very few can be traced higher; and such has been the effect of time, still more through the advance or decline of families and the progress of architectural improvement, than the natural decay of these buildings, that I should conceive it difficult to name a house in England, still inhabited by a gentleman and not belonging to the order of castles, the principal apartments of which are older than the reign of Henry VII. The instances at least must be extremely few.[191]

France by no means appears to have made a greater progress than our own country in domestic architecture. Except fortified castles, I do not find in the work of a very miscellaneous but apparently diligent writer,[192] any considerable dwellings mentioned before the reign of Charles VII, and very few of so early a date.[193] Jacques Cœur, a famous merchant unjustly persecuted

[190] "Hist. of Whalley." In Strutt's "View of Manners" we have an inventory of furniture in the house of Mr. Richard Fermor, ancestor of the Earl of Pomfret, at Easton in Northamptonshire, and another in that of Sir Adrian Foskewe. Both these houses appear to have been of the dimensions and arrangement mentioned.

[191] Single rooms, windows, doorways, etc., of an earlier date may perhaps not unfrequently be found; but such instances are always to be verified by their intrinsic evidence, not by the tradition of the place. [Note II.]

[192] "Mélanges tirés d'une grande bibliothèque," par M. de Paulmy, tome iii et xxxi. It is to be regretted that Le Grand d'Aussy never completed that part of his "Vie privée des Français" which was to have comprehended the history of civil architecture. Villaret has slightly noticed its state about 1380 (tome ii, p. 141).

[193] Chenônceaux in Touraine was built by a nephew of Chancellor Duprat; Gaillon in the department of Eure by Cardinal Amboise; both at the beginning of the sixteenth century. These are now considered, in their ruins, as among the most ancient houses in France. A work by Ducerceau ("Les plus excellens Batimens de France," 1607) gives accurate engravings of thirty houses; but with one or two exceptions they seem all to have been built in the sixteenth century. Even in that age, defence was naturally an object in constructing a French mansion-

by that prince, had a handsome house at Paris, as well as another at Bourges.[194] It is obvious that the long calamities which France endured before the expulsion of the English must have retarded this eminent branch of national improvement.

Even in Italy, where from the size of her cities and social refinements of her inhabitants greater elegance and splendour in building were justly to be expected, the domestic architecture of the middle ages did not attain any perfection. In several towns the houses were covered with thatch, and suffered consequently from destructive fires. Costanzo, a Neapolitan historian near the end of the sixteenth century, remarks the change of manners that had occurred since the reign of Joanna II, one hundred and fifty years before. The great families under the queen expended all their wealth on their retainers, and placed their chief pride in bringing them into the field. They were ill lodged, not sumptuously clothed, nor luxurious in their tables. The house of Caracciolo, high steward of that princess, one of the most powerful subjects that ever existed, having fallen into the hands of persons incomparably below his station, had been enlarged by them, as insufficient for their accommodation.[195] If such were the case in the city of Naples so late as the beginning of the fifteenth century, we may guess how mean were the habitations in less polished parts of Europe.

The two most essential improvements in architecture during this period, one of which had been missed by the sagacity of Greece and Rome, were chimneys and glass windows. Nothing apparently can be more simple than the former; yet the wisdom of ancient times had been content to let the smoke escape by an aperture in the centre of the roof; and a discovery, of which Vitruvius had not a glimpse, was made, perhaps in this country, by some forgotten semi-barbarian. About the middle of the fourteenth century the use of chimneys is distinctly mentioned in England and in Italy; but they are found in several of our castles which bear a much older date.[196] This country seems to have

house; and where defence is to be regarded, splendour and convenience must give way. The name of château was not retained without meaning.

[194] "Mélanges tirés," etc., tome iii. For the prosperity and downfall of Jacques Cœur, see Villaret, tome xvi, p. 11; but more especially "Mém. de l'Acad. des Inscript.," tome xx, p. 509. His mansion at Bourges still exists, and is well known to the curious in architectural antiquity. In former editions I have mentioned a house of Jacques Cœur at Beaumont-sur-Oise; but this was probably by mistake, as I do not recollect, nor can find, any authority for it.

[195] Giannone, "Ist. di Napoli," tome iii, p. 280.

[196] Muratori, "Antich. Ital.," Dissert. 25. p. 390. Beckman, in his "History of Inventions," vol. i, a work of very great research, can not trace any explicit mention of chimneys beyond the writings of John Villani, wherein, however, they are not noticed as a new invention. Piers Plowman, a few years later than Villani, speaks of a "chambre with a chimney" in which rich men usually dined. But in the account-book of Bolton Abbey, under the year 1311, there is a charge pro faciendo camino in the rectory-house of Gargrave. (Whitaker's "Hist. of Craven," p. 331.) This may, I think, have been only an iron stove or fire-pan; though Dr. W. without hesitation translates it a chimney. However, Mr. King, in his observations on ancient castles, "Archæol.," vol. vi, and Mr. Strutt, in

lost very early the art of making glass, which was preserved in France, whence artificers were brought into England to furnish the windows in some new churches in the seventh century.[197] It is said that in the reign of Henry III a few ecclesiastical buildings had glazed windows.[198] Suger, however, a century before, had adorned his great work, the Abbey of St. Denis, with windows, not only glazed but painted;[199] and I presume that other churches of the same class, both in France and England, especially after the lancet-shaped window had yielded to one of ampler dimensions, were generally decorated in a similar manner. Yet glass is said not to have been employed in the domestic architecture of France before the fourteenth century,[200] and its introduction into England was probably by no means earlier. Nor, indeed, did it come into general use during the period of the middle ages. Glazed windows were considered as movable furniture, and probably bore a high price. When the Earls of Northumberland, as late as the reign of Elizabeth, left Alnwick Castle, the windows were taken out of their frames and carefully laid by.[201]

But if the domestic buildings of the fifteenth century would not seem very spacious or convenient at present, far less would this luxurious generation be content with their internal accommodations. A gentleman's house containing three or four beds was extraordinarily well provided; few probably had more than two. The walls were commonly bare, without wainscot or even plaster; except that some great houses were furnished with hang-

his "View of Manners," vol. i, describe chimneys in castles of a very old construction. That at Conisborough in Yorkshire is peculiarly worthy of attention, and carries back this important invention to a remote antiquity.

In a recent work of some reputation it is said: "There does not appear to be any evidence of the use of chimney-shafts in England prior to the twelfth century. In Rochester Castle, which is in all probability the work of William Corbyl, about 1130, there are complete fireplaces with semicircular backs, and a shaft in each jamb, supporting a semicircular arch over the opening, and that is enriched with the zigzag moulding; some of these project slightly from the wall; the flues, however, go only a few feet up in the thickness of the wall, and are then turned out at the back, the apertures being small oblong holes. At the castle, Hedingham, Essex, which is of about the same date, there are fireplaces and chimneys of a similar kind. A few years later, the improvement of carrying the flue up the whole height of the wall appears; as at Christ Church, Hants; the keep at Newcastle; Sherborne Castle, etc. The early chimney-shafts are of considerable height, and similar; afterward they assumed a great variety of forms, and during the fourteenth century they are frequently very short." ("Glossary of Ancient Architecture," p. 100, edit. 1845.) It is said, too, here that chimneys were seldom used in halls till near the end of the fifteenth century; the smoke took its course, if it pleased, through a hole in the roof.

Chimneys are still more modern in France; and seem, according to Paulmy, to have come into common use since the middle of the seventeenth century. Jadis nos pères n'avoient qu'un unique chauffoir, qui étoit commun à toute une famille, et quelquefois à plusieurs (tome iii, p. 133). In another place, however, he says: Il parait que les tuyaux de cheminées étaient déjà très en usage en France (tome xxxi, p. 232).

[197] Du Cange, v. Vitreæ; Bentham's "History of Ely," p. 22.

[198] Matt. Paris; "Vitæ Abbatum St. Alb.," 122.

[199] "Recueil des Hist.," tome xii, p. 101.

[200] Paulmy, tome iii, p. 132. Villaret, tome xi, p. 141. Macpherson, p. 679.

[201] "Northumberl. Household Book," preface, p. 16. Bishop Percy says, on the authority of Harrison, that glass was not commonly used in the reign of Henry VIII.

ings, and that perhaps hardly so soon as the reign of Edward IV. It is unnecessary to add that neither libraries of books nor pictures could have found a place among furniture. Silver plate was very rare, and hardly used for the table. A few inventories of furniture that still remain exhibit a miserable deficiency.[202] And this was incomparably greater in private gentlemen's houses than among citizens, and especially foreign merchants. We have an inventory of the goods belonging to Contarini, a rich Venetian trader, at his house in St. Botolph's Lane, A. D. 1481. There appear to have been no less than ten beds, and glass windows are especially noticed as movable furniture. No mention, however, is made of chairs or looking-glasses.[203] If we compare this account, however trifling in our estimation, with a similar inventory of furniture in Skipton Castle, the great honour of the Earls of Cumberland, and among the most splendid mansions of the north, not at the same period, for I have not found any inventory of a nobleman's furniture so ancient, but in 1572, after almost a century of continual improvement, we shall be astonished at the inferior provision of the baronial residence. There were not more than seven or eight beds in this great castle, nor had any of the chambers either chairs, glasses, or carpets.[204] It is in this sense, probably, that we must understand Æneas Sylvius, if he meant anything more than to express a traveller's discontent, when he declares that the Kings of Scotland would rejoice to be as well lodged as the second class of citizens at

[202] See some curious valuations of furniture and stock in trade at Colchester in 1296 and 1301. Eden's Introduction to "State of the Poor," pp. 20 and 25, from the rolls of Parliament. A carpenter's stock was valued at a shilling, and consisted of five tools. Other tradesmen were almost as poor; but a tanner's stock, if there is no mistake, was worth 9*l.* 7*s.* 10*d.*, more than ten times any other. Tanners were principal tradesmen, the chief part of dress being made of leather. A few silver cups and spoons are the only articles of plate; and as the former are valued but at one or two shillings, they had, I suppose, but a little silver on the rim.

[203] Nicholl's "Illustrations," p. 119. In this work, among several interesting facts of the same class, we have another inventory of the goods of "John Port, late the king's servant," who died about 1524: he seems to have been a man of some consideration and probably a merchant. The house consisted of a hall, parlour, buttery, and kitchen, with two chambers, and one smaller, on the floor above; a napery, or linen room, and three garrets, besides a shop, which was probably detached. There were five bedsteads in the house, and on the whole a great deal of furniture for those times; much more than I have seen in any other inventory. His plate is valued at 94*l.*; his jewels at 23*l.*; his funeral expenses come to 73*l.* 6*s.* 8*d.* (p. 119).

[204] Whitaker's "Hist. of Craven," p. 289. A better notion of the accommodations usual in the rank immediately below may be collected from two inventories published by Strutt, one of Mr. Fermor's house at Easton, the other Sir Adrian Foskewe's. I have mentioned the size of these gentlemen's houses already. In the former, the parlour had wainscot, a table, and a few chairs; the chambers above had two best beds, and there was one servant's bed; but the inferior servants had only mattresses on the floor. The best chambers had window shutters and curtains. Mr. Fermor, being a merchant, was probably better supplied than the neighbouring gentry. His plate, however, consisted only of sixteen spoons, and a few goblets and ale pots. Sir Adrian Foskewe's opulence appears to have been greater; he had a service of silver plate, and his parlour was furnished with hangings. This was in 1539; it is not to be imagined that a knight of the shire a hundred years before would have rivalled even this scanty provision of movables. (Strutt's "View of Manners," vol. iii, p. 63.) These details, trifling as they may appear, are absolutely necessary in order to give an idea with some precision of a state of national wealth so totally different from the present.

Nuremberg.[205] Few burghers of that town had mansions, I presume, equal to the palaces of Dumferlin or Stirling, but it is not unlikely that they were better furnished.

In the construction of farm-houses and cottages, especially the latter, there have probably been fewer changes, and those it would be more difficult to follow. No building of this class can be supposed to exist of the antiquity to which the present work is confined; and I do not know that we have any document as to the inferior architecture of England so valuable as one which M. de Paulmy has quoted for that of France, though perhaps more strictly applicable to Italy, an illuminated manuscript of the fourteenth century, being a translation of Crescentio's work on agriculture, illustrating the customs, and, among other things, the habitations of the agricultural class. According to Paulmy, there is no other difference between an ancient and a modern farm-house than arises from the introduction of tiled roofs.[206] In the original work of Crescentio, a native of Bologna, who composed this treatise on rural affairs about the year 1300, an Italian farm-house, when built at least according to his plan, appears to have been commodious both in size and arrangement.[207] Cottages in England seem to have generally consisted of a single room without division of stories. Chimneys were unknown in such dwellings till the early part of Elizabeth's reign, when a very rapid and sensible improvement took place in the comforts of our yeomanry and cottagers.[208]

It must be remembered that I have introduced this disadvantageous representation of civil architecture as a proof of general poverty and backwardness in the refinements of life. Considered in its higher departments, that art is the principal boast of the middle ages. The common buildings, especially those of a public kind, were constructed with skill and attention to durability. The castellated style displays these qualities in great perfection; the means are well adapted to their objects, and its imposing grandeur, though chiefly resulting no doubt from massiveness and historical association, sometimes indicates a degree of architectural genius in the conception. But the most remarkable works of this art are the religious edifices erected in the twelfth and three following centuries. These structures, uniting sublimity in general composition with the beauties of variety and form, in-

[205] Cuperent tam egregiè Scotorum reges quàm mediocres Nurembergæ cives habitare. (Æn. Sylv. apud Schmidt, "Hist. des Allem.," tome v, p. 510.)

[206] Tome iii, p. 127.

[207] Crescentius in Commodum Ruralium. (Lovaniæ, absque anno.) This old edition contains many coarse wooden cuts, possibly taken from the illuminations which Paulmy found in his manuscript.

[208] Harrison's account of England, prefixed to Holingshed's Chronicles. Chimneys were not used in the farm-houses of Cheshire till within forty years of the publication of King's Vale-royal (1656); the fire was in the midst of the house, against a hob of clay, and the oxen lived under the same roof. (Whitaker's "Craven," p. 334.)

tricacy of parts, skilful or at least fortunate effects of shadow and light, and in some instances with extraordinary mechanical science, are naturally apt to lead those antiquaries who are most conversant with them into too partial estimates of the times wherein they were founded. They certainly are accustomed to behold the fairest side of the picture. It was the favourite and most honourable employment of ecclesiastical wealth to erect, to enlarge, to repair, to decorate cathedral and conventual churches. An immense capital must have been expended upon these buildings in England between the Conquest and the Reformation. And it is pleasing to observe how the seeds of genius, hidden as it were under the frost of that dreary winter, began to bud in the first sunshine of encouragement. In the darkest period of the middle ages, especially after the Scandinavian incursions into France and England, ecclesiastical architecture, though always far more advanced than any other art, bespoke the rudeness and poverty of the times. It began toward the latter part of the eleventh century, when tranquility, at least as to former enemies, was restored, and some degree of learning reappeared, to assume a more noble appearance. The Anglo-Norman cathedrals were perhaps as much distinguished above other works of man in their own age, as the more splendid edifices of a later period. The science manifested in them is not, however, very great; and their style, though by no means destitute of lesser beauties, is upon the whole an awkward imitation of Roman architecture, or perhaps more immediately of the Saracenic buildings in Spain and those of the lower Greek Empire.[209] But about the middle of the twelfth century this manner began to give place to what is improperly denominated the Gothic architecture;[210] of which

[209] The Saracenic architecture was once conceived to have been the parent of the Gothic. But the pointed arch does not occur, I believe, in any Moorish buildings; while the great mosque of Cordova, built in the eighth century, resembles, except by its superior beauty and magnificance, one of our oldest cathedrals; the nave of Gloucester, for example, or Durham. Even the vaulting is similar, and seems to indicate some imitation, though perhaps of a common model. Compare "Archæologia," vol. xvii, plates 1 and 2, with Murphy's "Arabian Antiquities," plate 5. The pillars, indeed, at Cordova are of the Corinthian order, perfectly executed, if we may trust the engraving, and the work, I presume, of Christian architects; while those of our Anglo-Norman cathedrals are generally an imitation of the Tuscan shaft, the builders not venturing to trust their roofs to a more slender support, though Corinthian foliage is common in the capitals, especially those of smaller ornamental columns. In fact, the Roman architecture is universally acknowledged to have produced what we call the Saxon or Norman; but it is remarkable that it should have been adopted, with no variation but that of the singular horseshoe arch, by the Moors of Spain.

The Gothic, or pointed arch, though very uncommon in the genuine Saracenic of Spain and the Levant, may be found in some prints from Eastern buildings; and is particularly striking in the façade of the great mosque at Lucknow, in Salt's designs for Lord Valentia's "Travels." The pointed arch buildings in the Holy Land have all been traced to the age of the crusades. Some arches, if they deserve the name, that have been referred to this class, are not pointed by their construction, but rendered such by cutting off and hollowing the projections of horizontal stones.

[210] Gibbon has asserted, what might justify this appellation, that "the image of Theodoric's palace at Verona, still extant on a coin, represents the oldest and most authentic model of Gothic architecture," vol. vii, p. 33. For this he

the pointed arch, formed by the segments of two intersecting semicircles of equal radius and described about a common diameter, has generally been deemed the essential characteristic. We are not concerned at present to inquire whether this style originated in France or Germany, Italy or England, since it was certainly almost simultaneous in all these countries;[211] nor from what source it was derived—a question of no small difficulty. I would only venture to remark that whatever may be thought of the origin of the pointed arch, for which there is more than one mode of accounting, we must perceive a very Oriental character in the vast profusion of ornament, especially on the exterior surface, which is as distinguishing a mark of Gothic buildings as their arches, and contributes in an eminent degree both to

refers to Maffei, "Verona Illustrata," p. 31, where we find an engraving, not, indeed, of a coin, but of a seal; the building represented on which is in a totally dissimilar style. The following passages in Cassiodorus, for which I am indebted to M. Ginguené, "Hist. Littér. de l'Italie," tome i, p. 55, would be more to the purpose: Quid dicamus columnarum junceam proceritatem? moles illas sublimissimas fabricarum quasi quibusdam erectis hastilibus contineri. These columns of reedy slenderness, so well described by juncea proceritas, are said to be found in the Cathedral of Montreal in Sicily, built in the eighth century. (Knight's "Principles of Taste," p. 162.) They are not, however, sufficient to justify the denomination of Gothic, which is usually confined to the pointed arch style.

[211] The famous Abbot Suger, minister of Louis VI, rebuilt St. Denis about 1140. The Cathedral of Laon is said to have been dedicated in 1114. ("Hist. Littéraire de la France," tome ix, p. 220.) I do not know in what style the latter of these churches is built, but the former is, or rather was, Gothic. Notre Dame at Paris was begun soon after the middle of the twelfth century, and completed under St. Louis. ("Mélanges tirés d'une grande bibliothèque," tome xxxi, p. 108.) In England, the earliest specimen I have seen of pointed arches is in a print of St. Botolphe's Priory at Colchester, said by Strutt to have been built in 1110. ("View of Manners," vol. i, plate 30.) These are apertures formed by excavating the space contained by the intersection of semicircular, or Saxon arches, which are perpetually disposed, by way of ornament, on the outer as well as inner surface of old churches, so as to cut each other, and consequently to produce the figure of a Gothic arch; and if there is no mistake in the date, they are probably among the most ancient of that style in Europe. Those of the church of St. Cross near Winchester are of the reign of Stephen; and, generally speaking, the pointed style, especially in vaulting, the most important object in the construction of a building, is not considered as older than Henry II. The nave of Canterbury Cathedral, of the erection of which by a French architect about 1176 we have a full account in Gervase (Twysden, "Decem Scriptores," col. 1289), and the Temple Church, dedicated in 1183, are the most ancient English buildings altogether in the Gothic manner.

The subject of ecclesiastical architecture in the middle ages has been so fully discussed by intelligent and observant writers since these pages were first published that they require some correction. The Oriental theory for the origin of the pointed architecture, though not given up, has not generally stood its ground; there seems more reason to believe that it was first adopted in Germany, as Mr. Hope has shown; but at first in single arches, not in the construction of the entire building.

The circular and pointed forms, instead of one having at once supplanted the other, were concurrent in the same building, through Germany, Italy, and Switzerland, for some centuries. I will just add to the instances mentioned by Mr. Hope and others, and which every traveller may corroborate, one not very well known, perhaps as early as any—the crypt of the cathedral at Basle, built under the reign of the Emperor Henry II, near the commencement of the eleventh century, where two pointed with three circular arches stand together, evidently from want of space enough to preserve the same breadth with the necessary height. The same circumstance will be found, I think, in the crypt of St. Denis, near Paris, which, however, is not so old. The writings of Hope, Rickman, Whewell, and Willis are prominent among many that have thrown light on this subject. The beauty and magnificence of the pointed style is acknowledged on all sides; perhaps the imitation of it has been too servile, and with too much forgetfulness of some very important changes in our religious aspect rendering that simply ornamental which was once directed to a great object. [1848.]

their beauties and to their defects. This, indeed, is rather applicable to the later than the earlier stage of architecture, and rather to continental than English churches. Amiens is in a far more florid style than Salisbury, though a contemporary structure. The Gothic species of architecture is thought by most to have reached its perfection, considered as an object of taste, by the middle or perhaps the close of the fourteenth century, or at least to have lost something of its excellence by the corresponding part of the next age; an effect of its early and rapid cultivation, since arts appear to have, like individuals, their natural progress and decay. The mechanical execution, however, continued to improve, and is so far beyond the apparent intellectual powers of those times that some have ascribed the principal ecclesiastical structures to the fraternity of freemasons, depositaries of a concealed and traditionary science. There is probably some ground for this opinion; and the earlier archives of that mysterious association, if they existed, might illustrate the progress of Gothic architecture, and perhaps reveal its origin. The remarkable change into this new style, that was almost contemporaneous in every part of Europe, can not be explained by any local circumstances or the capricious taste of a single nation.[212]

It would be a pleasing task to trace with satisfactory exactness the slow and almost perhaps insensible progress of agriculture and internal improvement during the latter period of the middle ages. But no diligence could recover the unrecorded history of a single village; though considerable attention has of late been paid to this interesting subject by those antiquaries, who, though sometimes affecting to despise the lights of modern philosophy, are unconsciously guided by their effulgence. I have already adverted to the wretched condition of agriculture during the prevalence of feudal tenures, as well as before their general establishment.[213] Yet even in the least civilized ages there

[212] The curious subject of freemasonry has unfortunately been treated only by panegyrists or calumniators, both equally mendacious. I do not wish to pry into the mysteries of the craft; but it would be interesting to know more of their history during the period when they were literally architects. They are charged by an act of Parliament, 3 H. VI, c. i, with fixing the price of their labour in their annual chapters, contrary to the statute of labourers, and such chapters are consequently prohibited. This is their first persecution; they have since undergone others, and are perhaps reserved for still more. It is remarkable, that masons were never legally incorporated, like other traders; their bond of union being stronger than any charter. The article Masonry in the "Encyclopædia Britannica" is worth reading.

[213] I can not resist the pleasure of transcribing a lively and eloquent passage from Dr. Whitaker: "Could a curious observer of the present day carry himself nine or ten centuries back, and ranging the summit of Pendle survey the forked vale of Calder on one side, and the bolder margins of Ribble and Hadder on the other, instead of populous towns and villages, the castle, the old tower-built house, the elegant modern mansion, the artificial plantation, the inclosed park and pleasure ground: instead of uninterrupted inclosures which have driven sterility almost to the summit of the fells, how great must then have been the contrast, when ranging either at a distance, or immediately beneath, his eye must have caught vast tracts of forest ground stagnating with bog or darkened by native woods, where the wild ox, the roe, the

were not wanting partial encouragements to cultivation, and the ameliorating principle of human industry struggled against destructive revolutions and barbarous disorder. The devastation of war from the fifth to the eleventh century rendered land the least costly of all gifts, though it must ever be the most truly valuable and permanent. Many of the grants to monasteries, which strike us as enormous, were of districts absolutely wasted, which would probably have been reclaimed by no other means. We owe the agricultural restoration of a great part of Europe to the monks. They chose, for the sake of retirement, secluded regions which they cultivated with the labour of their hands.[214] Several charters are extant, granted to convents, and sometimes to laymen, of lands which they had recovered from a desert condition after the ravages of the Saracens.[215] Some districts were allotted to a body of Spanish colonists, who emigrated, in the reign of Louis the Debonair, to live under a Christian sover-

stag, and the wolf had scarcely learned the supremacy of man, when, directing his view to the intermediate spaces, to the windings of the valleys, or the expanse of plains beneath, he could only have distinguished a few insulated patches of culture, each encircling a village of wretched cabins, among which would still be remarked one rude mansion of wood, scarcely equal in comfort to a modern cottage, yet then rising proudly eminent above the rest, where the Saxon lord, surrounded by his faithful cotarii, enjoyed a rude and solitary independence, owning no superior but his sovereign!" ("Hist. of Whalley," p. 133.) About a fourteenth part of this parish of Whalley was cultivated at the time of Doomsday. This proportion, however, would by no means hold in the counties south of Trent.

[214] "Of the Anglo-Saxon husbandry we may remark," says Mr. Turner, "that 'Doomsday Survey' gives us some indication that the cultivation of the church lands was much superior to that of any other order of society. They have much less wood upon them, and less common of pasture: and what they had appears often in smaller and more irregular pieces; while their meadow was more abundant, and in more numerous distributions." ("History of Anglo-Saxons," vol. ii, p. 167.)

It was the glory of St. Benedict's reform to have substituted bodily labour for the supine indolence of Oriental asceticism. In the East it was more difficult to succeed in such an endeavour, though it had been made. "The Benedictines have been," says Guizot, "the great clearers of land in Europe. A colony, a little swarm of monks, settled in places nearly uncultivated, often in the midst of a pagan population, in Germany, for example, or in Brittany; there, at once missionaries and labourers, they accomplish their double service through peril and fatigue." ("Civilis. en France," Leçon 14.) The northeastern parts of France, as far as the Lower Seine, were reduced into cultivation by the disciples of St. Columban, in the sixth and seventh centuries. The proofs of this are in Mabillon's "Acta Santorum Ord. Bened." See "Mém. de l'Acad. des Sciences Morales et Politiques," iii, 708.

Guizot has appreciated the rule of St. Benedict with that candid and favourable spirit which he always has brought to the history of the Church; anxious, as it seems, not only to escape the imputation of Protestant prejudices by others, but to combat them in his own mind; and aware, also, that the partial misrepresentations of Voltaire had sunk into the minds of many who were listening to his lectures. Compared with the writers of the eighteenth century, who were too much alienated by the faults of the clergy to acknowledge any redeeming virtues, or even with Sismondi, who, coming in a moment of reaction, feared the returning influence of mediæval prejudices, Guizot stands forward as an equitable and indulgent arbitrator. In this spirit he says of the rule of St. Benedict: La pensée morale et la discipline générale en sont sévères; mais dans le détail de la vie elle est humaine et modérée; plus humaine, plus modérée que les lois barbares, que les mœurs générales du temps; et je ne doute pas que les frères, renfermés dans l'intérieur d'un monastère, n'y fussent gouvernés par une autorité, à tout prendre, et plus raisonnable, et d'une manière moins dure qu'ils ne l'eussent été dans la société civile.

[215] Thus, in "Marca Hispanica," Appendix, p. 770, we have a grant from Lothaire I, in 834, to a person and his brother, of lands which their father, ab eremo in Septimaniâ trahens, had possessed by a charter of Charlemagne. See, too, p. 773, and other places. Du Cange, v. Eremus, gives also a few instances.

eign.[216] Nor is this the only instance of agricultural colonies. Charlemagne transplanted part of his conquered Saxons into Flanders, a country at that time almost unpeopled; and at a much later period there was a remarkable reflux from the same country, or rather from Holland to the coasts of the Baltic Sea. In the twelfth century great numbers of Dutch colonists settled along the whole line between the Ems and the Vistula. They obtained grants of uncultivated land on condition of fixed rents, and were governed by their own laws under magistrates of their own election.[217]

There can not be a more striking proof of the low condition of English agriculture in the eleventh century than is exhibited by "Doomsday Book." Though almost all England had been partially cultivated, and we find nearly the same manors, except in the north, which exist at present, yet the value and extent of cultivated ground are inconceivably small. With every allowance for the inaccuracies and partialities of those by whom that famous survey was completed,[218] we are lost in amazement at the constant recurrence of two or three carucates in demesne, with other lands occupied by ten or a dozen villeins, valued altogether at forty shillings, as the return of a manor, which now would yield a competent income to a gentleman. If "Doomsday Book" can be considered as even approaching to accuracy in respect of these estimates, agriculture must certainly have made a very material progress in the four succeeding centuries. This, however, is rendered probable by other documents. Ingulfus, Abbot of Croyland under the Conqueror, supplies an early and interesting evidence of improvement.[219] Richard de Rules, Lord of Deeping, he tells us, being fond of agriculture, obtained permission from the abbey to inclose a large portion of marsh for the purpose of separate pasture, excluding the Welland by a strong dike, upon which he erected a town, and rendering those

[216] Du Cange, v. Aprisia. Baluze, "Capitularia," tome i, p. 549. They were permitted to decide petty suits among themselves, but for more important matters were to repair to the county court. A liberal policy runs through the whole charter. See more on the same subject, id., p. 569.

[217] I owe this fact to M. Heeren, "Essai sur l'Influence des Croisades," p. 226. An inundation in their own country is supposed to have immediately produced this emigration; but it was probably successive, and connected with political as well as physical causes of greater permanence. The first instrument in which they are mentioned is a grant from the Bishop of Hamburgh in 1106. This colony has affected the local usages, as well as the denominations of things and places along the northern coast of Germany. It must be presumed that a large proportion of the emigrants were diverted from agriculture to people the commercial cities which grew up in the twelfth century upon that coast.

[218] Ingulfus tells us that the commissioners were pious enough to favour Croyland, returning its possessions inaccurately, both as to measurement and value; non ad verum pretium, nec ad verum spatium nostrum monasterium librabant misericorditer, præcaventes in futurum regis exactionibus (p. 79). I may just observe, by the way, that Ingulfus gives the plain meaning of the word Doomsday, which has been disputed. The book was so called, he says, pro suâ generalitate omnia tenementa totius terræ integrè continente; that is, it was as general and conclusive as the last judgment will be.

[219] This, of course, is subject to the doubt as to the authenticity of Ingulfus.

stagnant fens a garden of Eden.[220] In imitation of this spirited cultivator, the inhabitants of Spalding and some neighbouring villages by a common resolution divided their marshes among them; when some converting them to tillage, some reserving them for meadow, others leaving them in pasture, they found a rich soil for every purpose. The abbey of Croyland and villages in that neighbourhood followed this example.[221] This early instance of parochial inclosure is not to be overlooked in the history of social progress. By the statute of Merton, in the twentieth of Henry III, the lord is permitted to approve—that is, to inclose the waste lands of his manor—provided he leave sufficient common of pasture for the freeholders. Higden, a writer who lived about the time of Richard II, says, in reference to the number of hides and vills of England at the conquest, that by clearing of woods and ploughing up wastes there were many more of each in his age than formerly.[222] And it might be easily presumed, independently of proof, that woods were cleared, marshes drained, and wastes brought into tillage, during the long period that the house of Plantagenet sat on the throne. From manorial surveys, indeed, and similar instruments, it appears that in some places there was nearly as much ground cultivated in the reign of Edward III as at the present day. The condition of different counties, however, was very far from being alike, and in general the northern and western parts of England were the most backward.[223]

The culture of arable land was very imperfect. Fleta remarks, in the reign of Edward I or II, that unless an acre yielded more than six bushels of corn, the farmer would be a loser, and the land yield no rent.[224] And Sir John Cullum, from very minute accounts, has calculated that nine or ten bushels were a full average crop on an acre of wheat. An amazing excess of tillage accompanied, and partly, I suppose, produced this imperfect cultivation. In Hawsted, for example, under Edward I, there were thirteen or fourteen hundred acres of arable and only forty-five of meadow ground. A similar disproportion occurs almost invariably in every account we possess.[225] This seems inconsistent with the low price of cattle. But we must recollect that the common pasture, often the most extensive part of a manor, is not included, at least by any specific measurement, in these surveys.

[220] 1 Gale, XV Script., p. 77.

[221] Communi plebiscito viritim inter se diviserunt, et quidam suas portiones agricolantes, quidam ad fœnum conservantes, quidam ut prius ad pasturam suorum animalium, separaliter jacere permittentes, terram pinguem et uberem repererunt (p. 94).

[222] 1 Gale, XV Script., p. 201.

[223] A good deal of information upon the former state of agriculture will be found in Cullum's "History of Hawsted." Blomefield's "Norfolk" is in this respect among the most valuable of our local histories. Sir Frederick Eden, in the first part of his excellent work on the poor, has collected several interesting facts.

[224] L. ii, c. 8.

[225] Cullum, pp. 100, 220. Eden's "State of the Poor," etc., p. 48. Whitaker's "Craven," pp. 45, 336.

The rent of land differed, of course, materially; sixpence an acre seems to have been about the average for arable land in the thirteenth century,[226] though meadow was at double or treble that sum. But the landlords were naturally solicitous to augment a revenue that became more and more inadequate to their luxuries. They grew attentive to agricultural concerns, and perceived that a high rate of produce, against which their less enlightened ancestors had been used to clamour, would bring much more into their coffers than it took away. The exportation of corn had been absolutely prohibited. But the statute of the fifteenth Henry VI, c. 2, reciting that "on this account farmers and others who use husbandry can not sell their corn but at a low price, to the great damage of the realm," permits it to be sent anywhere but to the king's enemies, so long as the quarter of wheat shall not exceed 6*s*. 8*d*. in value, or that of barley 3*s*.

The price of wool was fixed in the thirty-second year of the same reign at a minimum, below which no person was suffered to buy it, though he might give more;[227] a provision neither wise nor equitable, but obviously suggested by the same motive. Whether the rents of land were augmented in any degree through these measures I have not perceived; their great rise took place in the reign of Henry VIII, or rather afterward.[228] The usual price of land under Edward IV seems to have been ten years' purchase.[229]

It may easily be presumed that an English writer can furnish very little information as to the state of agriculture in foreign countries. In such works relating to France as have fallen within my reach I have found nothing satisfactory, and can not pretend to determine whether the natural tendency of mankind to ameliorate their condition had a greater influence in promoting agriculture or the vices inherent in the actual order of society, and those public misfortunes to which that kingdom was exposed, in retarding it.[230] The state of Italy was far different; the rich Lombard plains, still more fertilized by irrigation, became a garden, and agriculture seems to have reached the excellence which it still retains. The constant warfare, indeed, of neighbouring cities is not very favourable to industry; and upon this account we might incline to place the greatest territorial improvement of Lombardy at an era rather posterior to that of

[226] I infer this from a number of passages in Blomefield, Cullum, and other writers. Hearne says that an acre was often called solidata terræ; because the yearly rent of one on the best land was a shilling. ("Lib. Nig. Scacc.," p. 31.)

[227] "Rot. Parl.," vol. v, p. 275.

[228] A passage in Bishop Latimer's sermons, too often quoted to require repetition, shows that land was much underlet about the end of the fifteenth century. His father, he says, kept half a dozen husbandmen, and milked thirty cows, on a farm of three or four pounds a year. It is not surprising that he lived as plentifully as his son describes.

[229] Rymer, tome xii, p. 204.

[230] Velly and Villaret scarcely mention this subject; and Le Grand merely tells us that it was entirely neglected; but the details of such an art, even in its state of neglect, might be interesting.

her republican government; but from this it primarily sprang; and without the subjugation of the feudal aristocracy, and that perpetual demand upon the fertility of the earth which an increasing population of citizens produced, the valley of the Po would not have yielded more to human labour than it had done for several preceding centuries.[231] Though Lombardy was extremely populous in the thirteenth and fourteenth centuries, she exported large quantities of corn.[232] The very curious treatise of Crescentius exhibits the full details of Italian husbandry about 1300, and might afford an interesting comparison to those who are acquainted with its present state. That state, indeed, in many parts of Italy displays no symptoms of decline. But whatever mysterious influence of soil or climate has scattered the seeds of death on the western regions of Tuscany, had not manifested itself in the middle ages. Among uninhabitable plains, the traveller is struck by the ruins of innumerable castles and villages, monuments of a time when pestilence was either unfelt or had at least not forbade the residence of mankind. Volterra, whose deserted walls look down upon that tainted solitude, was once a small but free republic; Siena, round whom, though less depopulated, the malignant influence hovers, was once almost the rival of Florence. So melancholy and apparently irresistible a decline of culture and population through physical causes, as seems to have gradually overspread that portion of Italy, has not perhaps been experienced in any other part of Europe, unless we except Iceland.

The Italians of the fourteenth century seem to have paid some attention to an art of which, both as related to cultivation and to architecture, our own forefathers were almost entirely ignorant. Crescentius dilates upon horticulture, and gives a pretty long list of herbs both esculent and medicinal.[233] His notions about the ornamental department are rather beyond what we should expect, and I do not know that his scheme of a flower garden could be much amended. His general arrangements, which are minutely detailed with evident fondness for the subject, would, of course, appear too formal at present; yet less so than those of subsequent times; and though acquainted with what is called the topiary art, that of training or cutting trees into regular figures, he does not seem to run into its extravagance. Regular gardens, according to Paulmy, were not made in France till the sixteenth or even seventeenth century;[234] yet one is said to have existed at the Louvre, of much older construction.[235] England, I believe, had nothing of the ornamental kind, unless it were some trees regularly disposed in the orchard of a monastery. Even

[231] Muratori, "Dissert." 21.
[232] Denina, l. xi, c. 7.
[233] Denina, l. vi.
[234] Tome iii, p. 145; tome xxxi, p. 258.
[235] De la Mare, "Traité de la Police," tome iii, p. 380.

the common horticultural art for culinary purposes, though not entirely neglected, since the produce of gardens is sometimes mentioned in ancient deeds, had not been cultivated with much attention.[226] The esculent vegetables now most in use were introduced in the reign of Elizabeth, and some sorts a great deal later.

I should leave this slight survey of economical history still more imperfect were I to make no observation on the relative values of money. Without something like precision in our notions upon this subject, every statistical inquiry becomes a source of confusion and error. But considerable difficulties attend the discussion. These arise principally from two causes: the inaccuracy or partial representations of historical writers, on whom we are accustomed too implicitly to rely, and the change of manners, which renders a certain command over articles of purchase less adequate to our wants than it was in former ages.

The first of these difficulties is capable of being removed by a circumspect use of authorities. When this part of statistical history began to excite attention, which was hardly perhaps before the publication of Bishop Fleetwood's "Chronicon Preciosum," so few authentic documents had been published with respect to prices that inquirers were glad to have recourse to historians, even when not contemporary, for such facts as they had thought fit to record. But these historians were sometimes too distant from the times concerning which they wrote, and too careless in their general character, to merit much regard; and even when contemporary were often credulous, remote from the concerns of the world, and, at the best, more apt to register some extraordinary phenomenon of scarcity or cheapness than the average rate of pecuniary dealings. The one ought, in my opinion, to be absolutely rejected as testimonies, the other to be sparingly and diffidently admitted.[227] For it is no longer necessary to lean upon such uncertain witnesses. During the last century

[226] Eden's "State of the Poor," vol. i, p. 51.

[227] Sir F. Eden, whose table of prices, though capable of some improvement, is perhaps the best that has appeared, would, I think, have acted better, by omitting all references to mere historians, and relying entirely on regular documents. I do not, however, include local histories, such as the "Annals of Dunstaple," when they record the market prices of their neighbourhood, in respect of which the book last mentioned is almost in the nature of a register. Dr. Whitaker remarks the inexactness of Stowe, who says that wheat sold in London, A. D. 1514, at 20*s.* a quarter: whereas it appears to have been at 9*s.* in Lancashire, where it was always dearer than in the metropolis. ("Hist. of Whalley," p. 97.) It is an odd mistake, into which Sir F. Eden has fallen, when he asserts and argues on the supposition that the price of wheat fluctuated in the thirteenth century, from 1*s.* to 6*l.* 8*s.* a quarter (vol. i, p. 18). Certainly, if any chronicler had mentioned such a price as the latter, equivalent to 150*l.* at present, we should either suppose that his text was corrupt, or reject it as an absurd exaggeration. But, in fact, the author has, through haste, mistaken 6*s.* 8*d.* for 6*l.* 8*s.*, as will appear by referring to his own table of prices, where it is set down rightly. It is observed by Mr. Macpherson, a very competent judge, that the arithmetical statements of the best historians of the middle ages are seldom correct, owing partly to their neglect of examination, and partly to blunders of transcribers. ("Annals of Commerce," vol. i, p. 423.)

a very laudable industry has been shown by antiquaries in the publication of account-books belonging to private persons, registers of expenses in convents, returns of markets, valuations of goods, tavern bills, and, in short, every document, however trifling in itself, by which this important subject can be illustrated. A sufficient number of such authorities, proving the ordinary tenor of prices rather than any remarkable deviations from it, are the true basis of a table, by which all changes in the value of money should be measured. I have little doubt but that such a table might be constructed from the data we possess with tolerable exactness, sufficient at least to supersede one often quoted by political economists, but which appears to be founded upon very superficial and erroneous inquiries.[238]

It is by no means required that I should here offer such a table of values, which, as to every country except England, I have no means of constructing, and which, even as to England, would be subject to many difficulties.[239] But a reader unaccustomed to these investigations ought to have some assistance in comparing the prices of ancient times with those of his own. I will therefore, without attempting to ascend very high—for we have really no sufficient data as to the period immediately subsequent to the conquest, much less that which preceded—endeavour at a sort of approximation for the thirteenth and fifteenth centuries. In the reigns of Henry III and Edward I, previously to the first debasement of the coin by the latter in 1301, the ordinary price of a quarter of wheat appears to have been about four shillings, and that of barley and oats in proportion. A sheep was sold rather high at a shilling, an ox might be reckoned at ten or twelve.[240] The value of cattle is, of course, dependent upon their breed and condition, and we have unluckily no early account of butcher's meat; but we can hardly take a less multiple than about thirty for animal food and eighteen or twenty for corn, in order to bring the prices of the thirteenth century to a level

[238] The table of comparative values by Sir George Shuckburgh ("Philosoph. Transact. for 1798," p. 196) is strangely incompatible with every result to which my own reading has led me. It is the hasty attempt of a man accustomed to different studies; and one can neither pardon the presumption of obtruding such a slovenly performance on a subject where the utmost diligence was required, nor the affectation with which he apologizes for "descending from the dignity of philosophy."

[239] M. Guérard, editor of "Paris sous Philippe le Bel," in the "Documens Inédits" (1841, p. 365), after a comparison of the prices of corn, concludes that the value of silver has declined since that reign, in the ratio of five to one. This is much less than we allow in England. M. Leber ("Mém. de l'Acad. des Inscrip., Nouvelle Série," xiv, 230) calculates the power of silver under Charlemagne, compared with the present day, to have been as nearly eleven to one. It fell afterward to eight, and continued to sink during the middle ages; the average of prices during the fourteenth and fifteenth centuries, taking corn as the standard, was six to one; the comparison is, of course, only for France This is an interesting paper, and contains tables worthy of being consulted.

[240] Blomefield's "History of Norfolk," and Sir J. Cullum's of Hawsted, furnish several pieces even at this early period. Most of them are collected by Sir F. Eden. Fleta reckons 4s. the average price of a quarter of wheat in his time (l. ii, c. 84). This writer has a digression on agriculture, whence, however, less is to be collected than we should expect.

with those of the present day.[241] Combining the two, and setting the comparative dearness of cloth against the cheapness of fuel and many other articles, we may perhaps consider any given sum under Henry III and Edward I as equivalent in general command over commodities to about twenty-four or twenty-five times their nominal value at present. Under Henry VI, the coin had lost one third of its weight in silver, which caused a proportional increase of money prices;[242] but, so far as I can perceive, there had been no diminution in the value of that metal. We have not much information as to the fertility of the mines which supplied Europe during the middle ages; but it is probable that the drain of silver toward the East, joined to the ostentatious splendour of courts, might fully absorb the usual produce. By the statute 15 Henry VI, c. 2, the price up to which wheat might be exported is fixed at 6*s.* 8*d.*, a point no doubt above the average; and the private documents of that period, which are sufficiently numerous, lead to a similar result.[243] Sixteen will be a proper multiple when we would bring the general value of money in this reign to our present standard.[244] [1816.]

But after ascertaining the proportional values of money at different periods by a comparison of the prices in several of the chief articles of expenditure, which is the only fair process, we shall sometimes be surprised at incidental facts of this class which

[241] The fluctuations of price have unfortunately been so great of late years, that it is almost as difficult to determine one side of our equation as the other. Any reader, however, has it in his power to correct my proportions, and adopt a greater or less multiple, according to his own estimate of current prices, or the changes that may take place from the time when this is written [1816].

[242] I have sometimes been surprised at the facility with which prices adjusted themselves to the quantity of silver contained in the current coin, in ages which appear too ignorant and too little commercial for the application of this mercantile principle. But the extensive dealings of the Jewish and Lombard usurers, who had many debtors in almost all parts of the country, would of itself introduce a knowledge that silver, not its stamp, was the measure of value. I have mentioned in another place (vol. i, p. 131) the heavy discontents excited by this debasement of the coin in France; but the more gradual enhancement of nominal prices in England seems to have prevented any strong manifestations of a similar spirit at the successive reductions in value which the coin experienced from the year 1300. The connection, however, between commodities and silver was well understood. Wykes, an annalist of Edward I's age, tells us that the Jews clipped our coin, till it retained hardly half its due weight, the effect of which was a general enhancement of prices, and decline of foreign trade: Mercatores transmarini cum mercimoniis suis regnum Angliæ minus solito frequentabant; necnon quod omnimoda venalium genera incomparabiliter solito fuerunt cariora. (2 Gale, XV Script., p. 107.) Another chronicler of the same age complains of bad foreign money, alloyed with copper; nec erat in quatuor aut quinque ex iis pondus unius denarii argentii. . . . . Eratque pessimum sæculum pro tali monetâ, et fiebant commutationes plurimæ in emptione et venditione rerum. Edward, as the historian informs us, bought in this bad money at a rate below its value, in order to make a profit, and fined some persons who interfered with his traffic. (W. Hemingford, ad ann. 1299.)

[243] These will chiefly be found in Sir F. Eden's table of prices; the following may be added from the account-book of a convent between 1415 and 1425: Wheat varied from 4*s.* to 6*s.*; barley from 3*s.* 2*d.* to 4*s.* 10*d.*; oats from 1*s.* 8*d.* to 2*s.* 4*d.*; oxen from 12*s.* to 16*s.*; sheep from 1*s.* 2*d.* to 1*s.* 4*d.*; butter ½*d.* per lb.; eggs twenty-five for 1*d.*; cheese ½*d.* per lb. (Lansdowne MSS., vol. i, Nos. 28 and 29.) These prices do not always agree with those given in other documents of equal authority in the same period; but the value of provisions varied in different counties, and still more so in different seasons of the year.

[244] I insert the following comparative table of English money from Sir Fred-

seem irreducible to any rule. These difficulties arise not so much from the relative scarcity of particular commodities, which it is for the most part easy to explain, as from the change in manners and in the usual mode of living. We have reached in this age so high a pitch of luxury that we can hardly believe or comprehend the frugality of ancient times, and have in general formed mistaken notions as to the habits of expenditure which then prevailed. Accustomed to judge of feudal and chivalrous ages by works of fiction, or by historians who embellished their writings with accounts of occasional festivals and tournaments, and sometimes inattentive enough to transfer the manners of the seventeenth to the fourteenth century, we are not at all aware of the usual simplicity with which the gentry lived under Edward I or even Henry VI. They drank little wine; they had no foreign luxuries; they rarely or never kept male servants except for husbandry; their horses, as we may guess by the price, were indifferent; they seldom travelled beyond their county. And even their hospitality must have been greatly limited, if the value of manors were really no greater than we find it in many surveys. Twenty-four seems a sufficient multiple when we would raise a sum mentioned by a writer under Edward I to the same real value expressed in our present money, but an income of ten or twenty pounds was reckoned a competent estate for a gentleman; at least the lord of a single manor would seldom have enjoyed more. A knight who possessed one hundred and fifty pounds per annum passed for extremely rich.[245] Yet this was not equal in command over commodities to four thousand pounds at present. But this income was comparatively free from

erick Eden. The unit, or present value refers of course to that of the shilling before the last coinage, which reduced it:

		Value of pound sterling, present money.			Proportion.
		£	s.	d.	
Conquest.	1066.....	2	18	1½	2.906
28 E. I.	1300.....	2	17	5	2.871
18 E. III.	1344.....	2	12	5¼	2.622
20 E. III.	1346.....	2	11	8	2.583
27 E. III.	1353.....	2	6	6	2.325
13 H. IV.	1412.....	1	18	9	1.937
4 E. IV.	1464.....	1	11	0	1.55
18 H. VIII.	1527.....	1	7	6¾	1.378
34 H. VIII.	1543.....	1	3	3¾	1.163
36 H. VIII.	1545.....	0	13	11½	0.698
37 H. VIII.	1546.....	0	9	3¾	0.466
5 E. VI.	1551.....	0	4	7¾	0 232
6 E. VI.	1552.....	1	0	6¾	1.028
1 Mary	1553.....	1	0	5¾	1.024
2 Eliz.	1560.....	1	0	8	1.033
43 Eliz.	1601.....	1	0	0	1.000

[245] Macpherson's "Annals," p. 424, from Matt. Paris.

taxation, and its expenditure lightened by the services of his villeins. Such a person, however, must have been among the most opulent of country gentlemen. Sir John Fortescue speaks of five pounds a year as "a fair living for a yeoman," a class of whom he is not at all inclined to diminish the importance.[246] So when Sir William Drury, one of the richest men in Suffolk, bequeaths in 1493 fifty marks to each of his daughters, we must not imagine that this was of greater value than four or five hundred pounds at this day, but remark the family pride and want of ready money which induced country gentlemen to leave their younger children in poverty.[247] Or, if we read that the expense of a scholar at the university in 1514 was but five pounds annually, we should err in supposing that he had the liberal accommodation which the present age deems indispensable, but consider how much could be afforded for about sixty pounds, which will be not far from the proportion. And what would a modern lawyer say to the following entry in the churchwarden's accounts of St. Margaret, Westminster, for 1476: "Also paid to Roger Fylpott, learned in the law, for his counsel giving, 3*s.* 8*d.*, with fourpence for his dinner"? [248] Though fifteen times the fee might not seem altogether inadequate at present, five shillings would hardly furnish the table of a barrister, even if the fastidiousness of our manners would admit of his accepting such a dole. But this fastidiousness, which considers certain kinds of remuneration degrading to a man of liberal condition, did not prevail in those simple ages. It would seem rather strange that a young lady should learn needlework and good breeding in a family of superior rank, paying for her board; yet such was the laudable custom of the fifteenth and even sixteenth centuries, as we perceive by the "Paston Letters," and even later authorities.[249]

There is one very unpleasing remark which every one who attends to the subject of prices will be induced to make, that the labouring classes, especially those engaged in agriculture, were better provided with the means of subsistence in the reign of Edward III or of Henry VI than they are at present. In the fourteenth century Sir John Cullum observes a harvest man had fourpence a day, which enabled him in a week to buy a comb of wheat; but to buy a comb of wheat a man must now (1784)

[246] "Difference of Limited and Absolute Monarchy," p. 133.

[247] "History of Hawsted," p. 141.

[248] Nicholls's "Illustrations," p. 2. One fact of this class did, I own, stagger me. The great Earl of Warwick writes to a private gentleman, Sir Thomas Tudenham, begging the loan of ten or twenty pounds to make up a sum he had to pay. ("Paston Letters," vol. i, p. 84.) What way shall we make this commensurate to the present value of money? But an ingenious friend suggested, what I do not question is the case, that this was one of many letters addressed to the adherents of Warwick, in order to raise by their contributions a considerable sum. It is curious, in this light, as an illustration of manners.

[249] "Paston Letters," vol. i, p. 224; Cullum's "Hawsted," p. 182.

work ten or twelve days.[250] So, under Henry VI, if meat was at a farthing and a half the pound, which I suppose was about the truth, a labourer earning threepence a day, or eighteenpence in the week, could buy a bushel of wheat at six shillings the quarter, and twenty-four pounds of meat for his family. A labourer at present, earning twelve shillings a week, can only buy half a bushel of wheat at eighty shillings the quarter, and twelve pounds of meat at sevenpence.[251] Several acts of Parliament regulate the wages that might be paid to labourers of different kinds. Thus the statute of labourers in 1350 fixed the wages of reapers during harvest at threepence a day without diet, equal to five shillings at present; that of 23 H. VI, c. 12, in 1444, fixed the reapers' wages at fivepence and those of common workmen in building at three and a half pence, equal to 6*s.* 8*d.* and 4*s.* 8*d.*; that of 11 H. VII, c. 22, in 1496, leaves the wages of labourers in harvest as before, but rather increases those of ordinary workmen. The yearly wages of a chief hind or shepherd by the act of 1444 were 1*l.* 4*s.*, equivalent to about twenty pounds; those of a common servant in husbandry 18*s.* 4*d.*, with meat and drink; they were somewhat augmented by the statute of 1496.[252] Yet, although these wages are regulated as a maximum by acts of Parliament, which may naturally be supposed to have had a view rather toward diminishing than enhancing the current rate, I am not fully convinced that they were not rather beyond it; private accounts at least do not always correspond with these statutable prices.[253] And it is necessary

[250] "Hist. of Hawsted," p. 228.

[251] Mr. Malthus observes on this, that I "have overlooked the distinction between the reigns of Edward III and Henry VIII (perhaps a misprint for VI), with regard to the state of the labouring classes. The two periods appear to have been essentially different in this respect." ("Principles of Political Economy," p. 393, first edit.) He conceives that the earnings of the labourer in corn were unusually low in the latter years of Edward III, which appears to have been effected by the statute of labourers (25 E. III), immediately after the great pestilence of 1350, though that mortality ought, in the natural course of things, to have considerably raised the real wages of labour. The result of his researches is that, in the reign of Edward III, the labourer could not purchase half a peck of wheat with a day's labour; from that of Richard II to the middle of that of Henry VI he could purchase nearly a peck; and from thence to the end of the century, nearly two pecks. At the time when the passage in the text was written [1816], the labourer could rarely have purchased more than a peck with a day's labour, and frequently a good deal less. In some parts of England this is the case at present [1846]; but in many counties the real wages of agricultural labourers are considerably higher than at that time, though not by any means so high as, according to Malthus himself, they were in the latter half of the fifteenth century. The excessive fluctuations in the price of corn, even taking averages of a long term of years, which we find through the middle ages, and indeed much later, account more than any other assignable cause for those in real wages of labour, which do not regulate themselves very promptly by that standard, especially when coercive measures are adopted to restrain them.

[252] See these rates more at length in Eden's "State of the Poor," vol. i, p. 32, etc.

[253] In the "Archæologia," vol. xviii, p. 281, we have a bailiff's acount of expenses in 1387, where it appears that a ploughman had sixpence a week, and five shillings a year, with an allowance of diet, which seems to have been only pottage. These wages are certainly not more than fifteen shillings a week in present value [1816]; which, though materially above the average rate of agricultural labour, is less so than some of the statutes would lead us to expect. Other facts may be found of a similar nature.

to remember that the uncertainty of employment, natural to so imperfect a state of husbandry, must have diminished the labourers' means of subsistence. Extreme dearth, not more owing to adverse seasons than to improvident consumption, was frequently endured.[254] But after every allowance of this kind, I should find it difficult to resist the conclusion that, however the labourer has derived benefit from the cheapness of manufactured commodities and from many inventions of common utility, he is much inferior in ability to support a family to his ancestors three or four centuries ago. I know not why some have supposed that meat was a luxury seldom obtained by the labourer. Doubtless he could not have procured as much as he pleased. But, from the greater cheapness of cattle, as compared with corn, it seems to follow that a more considerable portion of his ordinary diet consisted of animal food than at present. It was remarked by Sir John Fortescue that the English lived far more upon animal diet than their rivals the French; and it was natural to ascribe their superior strength and courage to this cause.[255] I should feel much satisfaction in being convinced that no deterioration in the state of the labouring classes has really taken place; yet it can not, I think, appear extraordinary to those who reflect that the whole population of England in the year 1377 did not much exceed 2,300,000 souls, about one fifth of the results upon the last enumeration, an increase with which that of the fruits of the earth can not be supposed to have kept an even pace.[256]

The second head to which I referred, the improvement of European society in the latter period of the middle ages, comprehends several changes, not always connected with each other, which contributed to inspire a more elevated tone of moral sentiment, or at least to restrain the commission of crimes. But the general effect of these upon the human character is neither so distinctly to be traced, nor can it be arranged with so much attention to chronology, as the progress of commercial wealth or of the arts that depend upon it. We can not from any past experience indulge the pleasing vision of a constant and parallel relation between the moral and intellectual energies, the virtues and the civilization of mankind. Nor is any problem connected

[254] See that singular book, "Piers Plowman's Vision," p. 145 (Whitaker's edition), for the different modes of living before and after harvest. The passage may be found in Ellis's "Specimens," vol. i, p. 151.

[255] Fortescue's "Difference between Abs. and Lim. Monarchy," p. 19. The passages in Fortescue, which bear on his favourite theme, the liberty and consequent happiness of the English, are very important, and triumphantly refute those superficial writers who would make us believe that they were a set of beggarly slaves.

[256] Besides the books to which I have occasionally referred, Mr. Ellis's "Specimens of English Poetry," vol. i, chap. 13, contain a short digression, but from well-selected materials, on the private life of the English in the middling and lower ranks about the fifteenth century. [I leave the foregoing pages with little alteration, but they may probably contain expressions which I would not now adopt. 1850.]

with philosophical history more difficult than to compare the relative characters of different generations, especially if we include a large geographical surface in our estimate. Refinement has its evils as well as barbarism; the virtues that elevate a nation in one country pass in the next to a different region; vice changes its form without losing its essence; the marked features of individual character stand out in relief from the surface of history, and mislead our judgment as to the general course of manners, while political revolutions and a bad constitution of government may always undermine or subvert the improvements to which more favourable circumstances have contributed. In comparing, therefore, the fifteenth with the twelfth century, no one would deny the vast increase of navigation and manufactures, the superior refinement of manners, the greater diffusion of literature. But should I assert that man had raised himself in the latter period above the moral degradation of a more barbarous age, I might be met by the question whether history bears witness to any greater excesses of rapine and inhumanity than in the wars of France and England under Charles VII, or whether the rough patriotism and fervid passions of the Lombards in the twelfth century were not better than the systematic treachery of their servile descendants three hundred years afterward. The proposition must, therefore, be greatly limited; yet we can scarcely hesitate to admit, upon a comprehensive view, that there were several changes during the last four of the middle ages, which must naturally have tended to produce, and some of which did unequivocally produce, a meliorating effect, within the sphere of their operation, upon the moral character of society.

The first and perhaps the most important of these was the gradual elevation of those whom unjust systems of polity had long depressed; of the people itself, as opposed to the small number of rich and noble, by the abolition or desuetude of domestic and predial servitude, and by the privileges extended to corporate towns. The condition of slavery is indeed perfectly consistent with the observance of moral obligations; yet reason and experience will justify the sentence of Homer, that he who loses his liberty loses half his virtue. Those who have acquired, or may hope to acquire, property of their own, are most likely to respect that of others; those whom law protects as a parent are most willing to yield her a filial obedience; those who have much to gain by the good-will of their fellow-citizens are most interested in the preservation of an honourable character. I have been led, in different parts of the present work, to consider these great revolutions in the order of society under other relations than that of their moral efficacy; and it will therefore be unnecessary to dwell upon them, especially as this efficacy is indetermi-

nate, though I think unquestionable, and rather to be inferred from general reflections than capable of much illustration by specific facts.

We may reckon, in the next place, among the causes of moral improvement a more regular administration of justice according to fixed laws, and a more effectual police. Whether the courts of judicature were guided by the feudal customs or the Roman law, it was necessary for them to resolve litigated questions with precision and uniformity. Hence a more distinct theory of justice and good faith was gradually apprehended; and the moral sentiments of mankind were corrected, as on such subjects they often require to be, by clearer and better grounded inferences of reasoning. Again, though it can not be said that lawless rapine was perfectly restrained even at the end of the fifteenth century, a sensible amendment had been everywhere experienced. Private warfare, the licensed robbery of feudal manners, had been subjected to so many mortifications by the Kings of France, and especially by St. Louis, that it can hardly be traced beyond the fourteenth century. In Germany and Spain it lasted longer; but the various associations for maintaining tranquility in the former country had considerably diminished its violence before the great national measure of public peace adopted under Maximilian.[257] Acts of outrage committed by powerful men became less frequent as the executive government acquired more strength to chastise them. We read that St. Louis, the best of French kings, imposed a fine upon the Lord of Vernon for permitting a merchant to be robbed in his territory between sunrise and sunset. For by the customary law, though in general ill observed, the lord was bound to keep the roads free from depredators in the daytime, in consideration of the toll he received from passengers.[258] The same prince was with difficulty prevented from passing a capital sentence on Enguerrand de Coucy, a baron of France, for a murder.[259] Charles the Fair actually put to death a nobleman of Languedoc for a series of

[257] Besides the German historians, see Du Cange, v. Ganerbium, for the confederacies in the empire, and Hermandatum for those in Castile. These appear to have been merely voluntary associations, and perhaps directed as much toward the prevention of robbery, as of what is strictly called private war. But no man can easily distinguish offensive war from robbery except by its scale; and where this was so considerably reduced, the two modes of injury almost coincide. In Aragon there was a distinct institution for the maintenance of peace, the kingdom being divided into unions or juntas, with a chief officer, called Supra-junctarius, at their head. (Du Cange, v. Juncta.)

[258] Henault, "Abrégé Chronol. à l'an. 1255." The institutions of Louis IX and his successors relating to police form a part, though rather a smaller part than we should expect from the title, of an immense work, replete with miscellaneous information, by Delamare, "Traité de la Police," 4 vols. in folio. A sketch of them may be found in Velly, tome v, p. 349, tome xviii, p. 437.

[259] Velly, tome v, p. 162, where this incident is told in an interesting manner from William de Nangis. Boulainvilliers has taken an extraordinary view of the king's behaviour. ("Hist. de l'Ancien Gouvernement, tome ii, p. 26.) In his eyes princes and plebeians were made to be the slaves of a feudal aristocracy.

robberies, notwithstanding the intercession of the provincial nobility.[260] The towns established a police of their own for internal security, and rendered themselves formidable to neighbouring plunderers. Finally, though not before the reign of Louis XI, an armed force was established for the preservation of police.[261] Various means were adopted in England to prevent robberies, which indeed were not so frequently perpetrated as they were on the Continent, by men of high condition. None of these, perhaps, had so much efficacy as the frequent sessions of judges under commissions of jail delivery. But the spirit of this country has never brooked that coercive police which can not exist without breaking in upon personal liberty by irksome regulations, and discretionary exercise of power; the sure instrument of tyranny, which renders civil privileges at once nugatory and insecure, and by which we should dearly purchase some real benefits connected with its slavish discipline.

I have some difficulty in adverting to another source of moral improvement during this period, the growth of religious opinions adverse to those of the established Church, both on account of its great obscurity, and because many of these heresies were mixed up with an excessive fanaticism. But they fixed themselves so deeply in the hearts of the inferior and more numerous classes, they bore, generally speaking, so immediate a relation to the state of manners, and they illustrate so much that more visible and eminent revolution which ultimately rose out of them in the sixteenth century, that I must reckon these among the most interesting phenomena in the progress of European society.

Many ages elapsed, during which no remarkable instance occurs of a popular deviation from the prescribed line of belief; and pious Catholics consoled themselves by reflecting that their forefathers, in those times of ignorance, slept at least the sleep of orthodoxy, and that their darkness was interrupted by no false lights of human reasoning.[262] But from the twelfth century this can no longer be their boast. An inundation of heresy broke in that age upon the Church, which no persecution was able thoroughly to repress, till it finally overspread half the surface of Europe. Of this religious innovation we must seek the commencement in a different part of the globe. The Manicheans afford an eminent example of that durable attachment to a traditional creed, which so many ancient sects, especially in the East, have cherished through the vicissitudes of ages, in spite of persecution and contempt. Their plausible and widely extended system had been in early times connected with the name of Christianity, however incompatible with its doctrines and its history.

[260] Velly, tome viii. p. 132.
[261] Id., xviii, p. 437.
[262] Fleury, 3me "Discours sur l'Hist. Ecclés."

After a pretty long obscurity, the Manichean theory revived with some modification in the western parts of Armenia, and was propagated in the eighth and ninth centuries by a sect denominated Paulicians. Their tenets are not to be collected with absolute certainty from the mouths of their adversaries, and no apology of their own survives. There seems, however, to be sufficient evidence that the Paulicians, though professing to acknowledge and even to study the apostolical writings, ascribed the creation of the world to an evil deity, whom they supposed also to be the author of the Jewish law, and consequently rejected all the Old Testament. Believing, with the ancient Gnostics, that our Saviour was clothed on earth with an impassive celestial body, they denied the reality of his death and resurrection.[263] These errors exposed them to a long and cruel persecution, during which a colony of exiles was planted by one of the Greek emperors in Bulgaria.[264] From this settlement they silently promulgated their Manichean creed over the western regions of Christendom. A large part of the commerce of those countries with Constantinople was carried on for several centuries by the channel of the Danube. This opened an immediate intercourse with the Paulicians, who may be traced up that river through Hungary and Bavaria, or sometimes taking the route of Lombardy into Switzerland and France.[265] In the last country, and

[263] The most authentic account of the Paulicians is found in a little treatise of Petrus Siculus, who lived about 870, under Basil the Macedonian. He had been employed on an embassy to Tephrica, the principal town of these heretics, so that he might easily be well informed; and, though he is sufficiently bigoted, I do not see any reason to question the general truth of his testimony, especially as it tallies so well with what we learn of the predecessors and successors of the Paulicians. They had rejected several of the Manichean doctrines, those, I believe, which were borrowed from the Oriental, Gnostic, and Cabalistic philosophy of emanation; and therefore readily condemned Manes, προθύμως ανατεματίζουσι Μάνητα. But they retained his capital errors, so far as regarded the principle of dualism, which he had taken from Zerdusht's religion, and the consequences he had derived from it. Petrus Siculus enumerates six Paulician heresies: 1. They maintained the existence of two deities, the one evil, and the creator of this world; the other good, called πατὴρ ἀνουράνιος, the author of that which is to come. 2. They refused to worship the Virgin, and asserted that Christ brought his body from heaven. 3. They rejected the Lord's Supper. 4. And the adoration of the cross. 5. They denied the authority of the Old Testament, but admitted the New, except the epistles of St. Peter, and, perhaps, the Apocalypse. 6. They did not acknowledge the order of priests.

There seems every reason to suppose that the Paulicians, notwithstanding their mistakes, were endowed with sincere and zealous piety, and studious of the Scriptures. A Paulician woman asked a young man if he had read the Gospels: he replied that laymen were not permitted to do so, but only the clergy: οὐκ ἔφασαν ἡμῖν τοῖς κοσμίκοις οὔτε ταῦτα ἀναγινώσκειν εἰ μὴ τοῖς ἱέρευσι μόνοις, p. 57. A curious proof that the Scriptures were already forbidden in the Greek Church, which I am inclined to believe, notwithstanding the leniency with which Protestant writers have treated it, was always more corrupt and more intolerant than the Latin.

[264] Gibbon, c. 54. This chapter of the historian of the "Decline and Fall" upon the Paulicians appears to be accurate, as well as luminous, and is at least far superior to any modern work on the subject.

[265] It is generally agreed that the Manicheans from Bulgaria did not penetrate into the west of Europe before the year 1000; and they seem to have been in small numbers till about 1140. We find them, however, early in the eleventh century. Under the reign of Robert, in 1007, several heretics were burned at Orleans for tenets which are represented as Manichean. (Velly, tome ii, p. 307.) These are said to have been imported from Italy; and the heresy began to strike root in that country about the same time. (Muratori, "Dissert." 60, "Antichità Italiane," tome iii, p. 304.) The Italian

especially in its southern and eastern provinces, they became conspicuous under a variety of names: such as Catharists, Picards, Paterins, but, above all, Albigenses. It is beyond a doubt that many of these sectaries owed their origin to the Paulicians; the appellation of Bulgarians was distinctively bestowed upon them, and, according to some writers, they acknowledged a primate or patriarch resident in that country.[266] The tenets ascribed to them by all contemporary authorities coincide so remarkably with those held by the Paulicians, and in earlier times by the Manicheans, that I do not see how we can reasonably deny what is confirmed by separate and uncontradicted testimonies, and contains no intrinsic want of probability.[267]

Manicheans were generally called Paterini, the meaning of which word has never been explained. We find few traces of them in France at this time; but about the beginning of the twelfth century, Guibert, Bishop of Soissons, describes the heretics of that city, who denied the reality of the death and resurrection of Jesus Christ, and rejected the sacraments ("Hist. Littéraire de la France," tome x, p. 451); before the middle of that age, the Cathari, Henricians, Petrobussians, and others appear, and the new opinions attracted universal notice. Some of these sectaries, however, were not Manicheans. (Mosheim, vol. iii, p. 116.)

The acts of the Inquisition of Toulouse, published by Limborch, from an ancient manuscript, contain many additional proofs that the Albigenses held the Manichean doctrine. Limborch himself will guide the reader to the principal passages (p. 30). In fact, the proof of Manicheism among the heretics of the twelfth century is so strong (for I have confined myself to those of Languedoc, and could easily have brought other testimony as to the Cathari), that I should never have thought of arguing the point, but for the confidence of some modern ecclesiastical writers.—What can we think of one who says, "It was not unusual to stigmatize new sects with the odious name of Manichees, though I know no evidence that there were any real remains of that ancient sect in the twelfth century"? (Milner's "History of the Church," vol. iii, p. 380.) Though this writer was by no means learned enough for the task he undertook, he could not be ignorant of facts related by Mosheim and other common historians.

I will only add, in order to obviate cavilling, that I use the word Albigenses for the Manichean sects, without pretending to assert that their doctrines prevailed more in the neighbourhood of Albi than elsewhere. The main position is, that a large part of the Languedocian heretics against whom the crusade was directed had imbibed the Paulician opinions. If any one chooses rather to call them Catharists, it will not be material.

[266] M. Paris, p. 267 (A. D. 1223). Circa dies istos, hæretici Albigenses constituerunt sibi Antipapam in finibus Bulgarorum, Croatiæ et Dalmatiæ, nomine Bartholomæum, etc. We are assured by good authorities that Bosnia was full of Manicheans and Arians as late as the middle of the fifteenth century. (Æneas Sylvius, p. 407; Spondanus, ad an. 1460; Mosheim.)

[267] There has been so prevalent a disposition among English divines to vindicate not only the morals and sincerity, but the orthodoxy of these Albigenses, that I deem it necessary to confirm what I have said in the text by some authorities, especially as few readers have it in their power to examine this very obscure subject. Petrus Monachus, a Cistercian monk, who wrote a history of the crusades against the Albigenses, gives an account of the tenets maintained by the different heretical sects. Many of them asserted two principles or creative beings: a good one for things invisible, an evil one for things visible; the former author of the New Testament, the latter of the Old. Novum Testamentum benigno deo, vetus vero maligno attribuebant; et illud omninò repudiabant, præter quasdam auctoritates, quæ de Veteri Testamento Novo sunt insertæ, quas ob Novi reverentiam Testamenti recipere dignum æstimabant. A vast number of strange errors are imputed to them, most of which are not mentioned by Alanus, a more dispassionate writer. (Du Chesne, "Scriptores Francorum," tome v, p. 556.) This Alanus de Insulis, whose treatise against heretics, written about 1200, was published by Masson at Lyons, in 1612, has left, I think, conclusive evidence of the Manicheism of the Albigenses. He states their argument upon every disputed point as fairly as possible, though his refutation is, of course, more at length. It appears that great discrepancies of opinion existed among these heretics, but the general tenor of their doctrines is evidently Manichean. Aiunt hæretici temporis nostri quod duo sunt principia rerum, principium lucis et principium tenebrarum, etc. This opinion, strange as we may think it, was supported by scriptural texts; so insufficient is a mere acquaintance with the sacred writings to secure unlearned and prejudiced minds from the wildest perversions

But though the derivation of these heretics called Albigenses from Bulgaria is sufficiently proved, it is by no means to be concluded that all who incurred the same imputation either derived their faith from the same country or had adopted the Manichean theory of the Paulicians. From the very invectives of their enemies, and the acts of the Inquisition, it is manifest that almost every shade of heterodoxy was found among these dissidents, till it vanished in a simple protestation against the wealth and tyranny of the clergy. Those who were absolutely free from any taint of Manicheism are properly called Waldenses; a name perpetually confounded in later times with that of Albigenses, but distinguishing a sect probably of separate origin, and at least of different tenets. These, according to the majority of writers, took their appellation from Peter Waldo, a merchant of Lyons, the parent, about the year 1160, of a congregation of seceders from the Church, who spread very rapidly over France and Germany.[268] According to others, the original Waldenses were a

of their meaning! Some denied the reality of Christ's body; others his being the Son of God; many the resurrection of the body; some even of a future state. They asserted in general the Mosaic law to have proceeded from the devil, proving this by the crimes committed during its dispensation, and by the words of St. Paul, "the law entered that sin might abound." They rejected infant baptism, but were divided as to the reason; some saying that infants could not sin, and did not need baptism; others, that they could not be saved without faith, and consequently that it was useless. They held sin after baptism to be irremissible. It does not appear that they rejected either of the sacraments. They laid great stress upon the imposition of hands, which seems to have been their distinctive rite.

One circumstance, which both Alanus and Robertus Monachus mention, and which other authorities confirm, is their division into two classes: the Perfect and the Credentes, or Consolati, both of which appellations are used. The former abstained from animal food, and from marriage, and led in every respect an austere life. The latter were a kind of lay brethren, living in a secular manner. This distinction is thoroughly Manichean, and leaves no doubt as to the origin of the Albigenses. (See Beausobre, "Hist. du Manichéisme," tome ii, pp. 762 and 777.) This candid writer represents the early Manicheans as a harmless and austere set of enthusiasts, exactly what the Paulicians and Albigenses appear to have been in succeeding ages. As many calumnies were vented against one as the other.

The long battle as to the Manicheism of the Albigensian sectaries has been renewed since the publication of this work, by Dr. Maitland on one side, and Mr. Faber and Dr. Gilly on the other; and it is not likely to reach a termination; being conducted by one party with far less regard to the weight of evidence than to the bearing it may have on the theological hypotheses of the writers. I have seen no reason for altering what is said in the text.

The chief strength of the argument seems to me to lie in the independent testimonies as to the Manicheism of the Paulicians, in Petrus Siculus and Photius, on the one hand, and as to that of the Languedocian heretics in the Latin writers of the twelfth and thirteenth centuries on the other; the connection of the two sects through Bulgaria being established by history, but the latter class of writers being unacquainted with the former. It is certain that the probability of general truth in these concurrent testimonies is greatly enhanced by their independence. And it will be found that those who deny any tinge of Manicheism in the Albigenses are equally confident as to the orthodoxy of the Paulicians. [1848.]

[268] The contemporary writers seem uniformly to represent Waldo as the founder of the Waldenses, and I am not aware that they refer the locality of that sect to the valleys of Piedmont, between Exiles and Pignerol (see Leger's map), which have so long been distinguished as the native country of the Vaudois. In the acts of the Inquisition we find Waldenses, sive pauperes de Lugduno, used as equivalent terms; and it can hardly be doubted that the poor men of Lyons were the disciples of Waldo. Alanus, the second book of whose treatise against heretics is an attack upon the Waldenses, expressly derives them from Waldo. Petrus Monachus does the same. These seem strong authorities, as it is not easy to perceive what advantage they could derive from misrepresentation. It has been, however, a position zealously maintained by some modern writers of respectable

race of uncorrupted shepherds, who in the valleys of the Alps had shaken off, or perhaps never learned, the system of superstition on which the Catholic Church depended for its ascendency. I am not certain whether their existence can be distinctly traced beyond the preaching of Waldo, but it is well known that the proper seat of the Waldenses or Vaudois has long continued to be in certain valleys of Piedmont. These pious and innocent sectaries, of whom the very monkish historians speak well, appear to have nearly resembled the modern Moravians. They had ministers of their own appointment, and denied the lawfulness of oaths and of capital punishment. In other respects their opinions probably were not far removed from those usually called Protestant. A simplicity of dress, and especially the use of wooden sandals, was affected by this people.[268]

name, that the people of the valleys had preserved a pure faith for several ages before the appearance of Waldo. I have read what is advanced on this head by Leger ("Histoire des Eglises Vaudoises") and by Allix ("Remarks on the Ecclesiastical History of the Churches of Piedmont"), but without finding any sufficient proof for this supposition, which, nevertheless, is not to be rejected as absolutely improbable. Their best argument is deduced from an ancient poem called "La Noble Loiçon," an original manuscript of which is in the public library of Cambridge, and another in that of Geneva. This poem is alleged to bear date in 1100, more than half a century before the appearance of Waldo. But the lines that contain the date are loosely expressed, and may very well suit with any epoch before the termination of the twelfth century:

"Ben ha mil et cent ans compli entierament,
Che fu scritta loro que sen al derier temp."

("Eleven hundred years are now gone and past,
Since thus it was written: These times are the last.")

See "Literature of Europe in Fifteenth, Sixteenth, and Seventeenth Centuries," chap. I, § 33.

I have found, however, a passage in a late work, which remarkably illustrates the antiquity of Alpine Protestantism, if we may depend on the date it assigns to the quotation. Mr. Planta's "History of Switzerland," p. 93, 4to edit., contains the following note: "A curious passage, singularly descriptive of the character of the Swiss, has lately been discovered in a manuscript chronicle of the Abbey of Corvey, which appears to have been written about the beginning of the twelfth century: Religionem nostram, et omnium Latinæ ecclesiæ Christianorum fidem, laici ex Suaviâ, Suiciâ, et Bavariâ humiliare voluerunt; homines seducti ab antiquâ progenie simplicium hominum, qui Alpes et viciniam habitant, et semper amant antiqua. In Suaviam, Bavariam et Italiam borealem æpe intrant illorum (ex Suiciâ) mercatores, qui biblia ediscunt memoriter, et ritus ecclesiæ aversantur, quos credunt esse novos. Nolunt imagines venerari, reliquias sanctorum aversantur, olera comedunt, rarò masticantes carnem, alii nunquam. Appellamus eos idcircò Manichæos. Horum quidam ab Hungariâ ad eos convenerunt, etc." It is a pity that the quotation has been broken off, as it might have illustrated the connection of the Bulgarians with these sectaries.

[268] The Waldenses were always considered as much less erroneous in their tenets than the Albigenses, or Manicheans. Erant præterea alii hæretici, says Robert Monachus in the passage above quoted, qui Waldenses dicebantur, a quodam Waldio nomine Lugdunensi. Hi quidem mali erant, sed comparatione aliorum hæreticorum longè minus perversi; in multis enim nobiscum conveniebant, in quibusdam dissentiebant. The only faults he seems to impute to them are the denial of the lawfulness of oaths and capital punishment, and the wearing wooden shoes. By this peculiarity of wooden sandals (sabots) they got the name of Sabbatati or Insabbatati. (Du Cange.) William du Puy, another historian of the same time, makes a similar distinction. Erant quidam Ariani, quidam Manichæi, quidam etiam Waldenses sive Lugdunenses, qui licet inter se dissidentes, omnes tamen in animarum perniciem contra fidem Catholicam conspirabant; et illi quidem Waldenses contra alios acutissimè disputant. (Du Chesne, tome v, p. 666.) Alanus, in his second book, where he treats of the Waldenses, charges them principally with disregarding the authority of the Church and preaching without a regular mission. It is evident, however, from the acts of the Inquisition, that they denied the existence of purgatory; and I should suppose that, even at that time, they had thrown off most of the popish system of doctrine, which is so nearly connected with clerical wealth and power. The difference made in these records between the Waldenses and the Manichean

I have already had occasion to relate the severe persecution which nearly exterminated the Albigenses of Languedoc at the close of the twelfth century, and involved the Counts of Toulouse in their ruin. The Catharists, a fraternity of the same Paulician origin, more dispersed than the Albigenses, had previously sustained a similar trial. Their belief was certainly a compound of strange errors with truth; but it was attended by qualities of a far superior lustre to orthodoxy, by a sincerity, a piety, and a self-devotion that almost purified the age in which they lived.[270] It is always important to perceive that these high moral excellences have no necessary connection with speculative truths; and upon this account I have been more disposed to state explicitly the real Manicheism of the Albigenses, especially as Protestant writers, considering all the enemies of Rome as their friends, have been apt to place the opinions of these sectaries in a very false light. In the course of time, undoubtedly, the system of their Paulician teachers would have yielded, if the inquisitors had admitted the experiment, to a more accurate study of the Scriptures, and to the knowledge which they would have imbibed from the Church itself. And, in fact, we find that the peculiar tenets of Manicheism died away after the middle of the thirteenth century, although a spirit of dissent from the established creed broke out in abundant instances during the two subsequent ages.

We are in general deprived of explicit testimonies in tracing

sects shows that the imputations cast upon the latter were not indiscriminate calumnies. (See Limborch, pp. 201 and 228.)

The "History of Languedoc," by Vaissette and Vich, contains a very good account of the sectaries in that country; but I have not immediate access to the book. I believe that proof will be found of the distinction between the Waldenses and Albigenses in tome iii, p. 446. But I am satisfied that no one who has looked at the original authorities will dispute the proposition. These Benedictine historians represent the Henricians, an early set of reformers, condemned by the Council of Lombez, in 1165, as Manichees. Mosheim considers them as of the Vaudois school. They appeared some time before Waldo.

[270] The general testimony of their enemies to the purity of morals among the Languedocian and Lyonese sectaries is abundantly sufficient. One Regnier, who had lived among them, and became afterward an inquisitor, does them justice in this respect. See Turner's "History of England" for several other proofs of this. It must be confessed that the Catharists are not free from the imputation of promiscuous licentiousness. But whether this was a mere calumny, or partly founded upon truth, I can not determine. Their prototypes, the ancient Gnostics, are said to have been divided into two parties, the austere and the relaxed; both condemning marriage for opposite reasons. Alanus, in the book above quoted, seems to have taken up several vulgar prejudices against the Cathari. He gives an etymology of their name à catto; quia osculantur posteriora catti; in cujus specie, ut aiunt, appareret iis Lucifer, p. 146. This notable charge was brought afterward against the Templars.

As to the Waldenses, their innocence is out of all doubt. No book can be written in a more edifying manner than "La Noble Loiçon," of which large extracts are given by Leger, in his "Histoire des Eglises Vaudoises." Four lines are quoted by Voltaire ("Hist. Universelle," c. 69), as a specimen of the Provençal language, though they belong rather to the patois of the valleys. But as he has not copied them rightly, and as they illustrate the subject of this note, I shall repeat them here from Leger, p. 28:

"Que sel se troba alcun bon que vollia
amar Dio e temer Jeshu Xrist,
Que non vollia maudire, ni jura, ni
mentir,
Ni avoutrar, ni aucire, ni penre de
l'autruy,
Ni venjar se de li sio ennemie,
Illi dison quel es Vaudes e degne de
murir."

the revolutions of popular opinion. Much must, therefore, be left to conjecture, but I am inclined to attribute a very extensive effect to the preaching of these heretics. They appear in various countries nearly during the same period, in Spain, Lombardy, Germany, Flanders, and England, as well as France. Thirty unhappy persons, convicted of denying the sacraments, are said to have perished at Oxford by cold and famine in the reign of Henry II. In every country the new sects appear to have spread chiefly among the lower people, which, while it accounts for the imperfect notice of historians, indicates a more substantial influence upon the moral condition of society than the conversion of a few nobles or ecclesiastics.[271]

But even where men did not absolutely enlist under the banners of any new sect they were stimulated by the temper of their age to a more zealous and independent discussion of their religious system. A curious illustration of this is furnished by one of the letters of Innocent III. He had been informed by the Bishop of Metz, as he states to the clergy of the diocese, that no small multitude of laymen and women, having procured a translation of the Gospels, epistles of St. Paul, the Psalter, Job, and other books of Scripture, to be made for them into French, meet in secret conventicles to hear them read, and preach

[271] It would be difficult to specify all the dispersed authorities which attest the existence of the sects derived from the Waldenses and Paulicians in the twelfth, thirteenth, and fourteenth centuries. Besides Mosheim, who has paid considerable attention to the subject, I would mention some articles in Du Cange which supply gleanings: namely, Beghardi, Bulgari, Lollardi, Paterini, Picardi, Pifli, Populicani.

Upon the subject of the Waldenses and Albigenses generally, I have borrowed some light from Mr. Turner's "History of England," vol. ii, pp. 377, 393. This learned writer has seen some books that have not fallen into my way; and I am indebted to him for a knowledge of Alanus's treatise, which I have since read. At the same time I must observe, that Mr. Turner has not perceived the essential distinction between the two leading sects.

The name of Albigenses does not frequently occur after the middle of the thirteenth century; but the Waldenses, or sects bearing that denomination, were dispersed over Europe. As a term of different reproach was derived from the word Bulgarian, so vauderie, or the profession of the Vaudois, was sometimes applied to witchcraft. Thus in the proceedings of the Chambre Brulante at Arras, in 1459, against persons accused of sorcery, their crime is denominated vauderie. The fullest account of this remarkable story is found in the "Memoirs" of Du Clercq, first published in the general collection of "Historical Memoirs," tome ix, pp. 530, 471. It exhibits a complete parallel to the events that happened in 1682 at Salem in New England. A few obscure persons were accused of vauderie, or witchcraft. After their condemnation, which was founded on confessions obtained by torture, and afterward retracted, an epidemical contagion of superstitious dread was diffused all around. Numbers were arrested, burned alive by order of a tribunal instituted for the detection of this offence, or detained in prison; so that no person in Arras thought himself safe. It was believed that many were accused for the sake of their possessions, which were confiscated to the use of the Church. At length the Duke of Burgundy interfered, and put a stop to the persecutions. The whole narrative in Du Clercq is interesting, as a curious document of the tyranny of bigots, and of the facility with which it is turned to private ends.

To return to the Waldenses: the principal course of their emigration is said to have been into Bohemia, where, in the fifteenth century, the name was borne by one of the seceding sects. By their profession of faith, presented to Ladislaus Posthumus, it appears that they acknowledged the corporal presence in the eucharist, but rejected purgatory and other Romish doctrines. See it in the "Fasciculus Rerum expetendarum et fugiendarum," a collection of treatises illustrating the origin of the Reformation, originally published at Cologne in 1535, and reprinted at London in 1690.

to each other, avoiding the company of those who do not join in their devotion, and having been reprimanded for this by some of their parish priests, have withstood them, alleging reasons from the Scriptures why they should not be so forbidden. Some of them, too, deride the ignorance of their ministers, and maintain that their own books teach them more than they can learn from the pulpit, and that they can express it better. Although the desire of reading the Scriptures, Innocent proceeds, is rather praiseworthy than reprehensible, yet they are to be blamed for frequenting secret assemblies, for usurping the office of preaching, deriding their own ministers, and scorning the company of such as do not concur in their novelties. He presses the bishop and chapter to discover the author of this translation, which could not have been made without a knowledge of letters, and what were his intentions, and what degree of orthodoxy and respect for the Holy See those who used it possessed. This letter of Innocent III, however, considering the nature of the man, is sufficiently temperate and conciliatory. It seems not to have answered its end; for in another letter he complains that some members of this little association continued refractory and refused to obey either the bishop or the Pope.[272]

In the eighth and ninth centuries, when the Vulgate had ceased to be generally intelligible, there is no reason to suspect any intention in the Church to deprive the laity of the Scriptures. Translations were freely made into the vernacular languages, and perhaps read in churches, although the acts of saints were generally deemed more instructive. Louis the Debonair is said to have caused a German version of the New Testament to be made. Otfrid, in the same century, rendered the Gospels, or rather abridged them, into German verse. This work is still extant, and is in several respects an object of curiosity.[273] In the eleventh or twelfth century we find translations of the Psalms, Job, Kings, and the Maccabees into French.[274] But after the diffusion of heretical opinions, or what was much the same thing, of free inquiry, it became expedient to secure the orthodox faith from lawless interpretation. Accordingly, the Council of Toulouse in 1229 prohibited the laity from possessing the Scriptures, and this precaution was frequently repeated upon subsequent occasions.[275]

[272] "Opera Innocent III," pp. 468, 537. A translation of the Bible had been made by direction of Peter Waldo; but whether this used in Lorraine was the same does not appear. Metz was full of the Vaudois, as we find by other authorities.

[273] Schilteri Thesaurus Antiq. Teutonicorum.

[274] "Mém. de l'Acad. des Inscript.," tome xvii, p. 720.

[275] The Anglo-Saxon versions are deserving of particular remark. It has been said that our Church maintained the privilege of having part of the daily service in the mother tongue. "Even the mass itself," says Lappenberg, "was not read entirely in Latin." ("Hist. of England," vol. i, p. 202.) This, however, is denied by Lingard, whose authority is probably superior. ("Hist. of Ang.-Sax. Church," i, 307.) But he allows that the Epistle and Gospel were read in English,

The ecclesiastical history of the thirteenth or fourteenth centuries teems with new sectaries and schismatics, various in their aberrations of opinion, but all concurring in detestation of the Established Church.[276] They endured severe persecutions with a sincerity and firmness which in any cause ought to command respect. But in general we find an extravagant fanaticism among them; and I do not know how to look for any amelioration of society from the Franciscan seceders, who quibbled about the property of things consumed by use, or from the mystical visionaries of different appellations, whose moral practice was sometimes more than equivocal. Those who feel any curiosity about such subjects, which are by no means unimportant, as they illustrate the history of the human mind, will find them treated very fully by Mosheim. But the original sources of information are not always accessible in this country, and the research would perhaps be more fatiguing than profitable.

I shall, for an opposite reason, pass lightly over the great revolution in religious opinion wrought in England by Wicliffe, which will generally be familiar to the reader from our common historians. Nor am I concerned to treat of theological inquiries, or to write a history of the Church. Considered in its effects upon manners, the sole point which these pages have in view, the preaching of this new sect certainly produced an extensive reformation. But their virtues were by no means free from some unsocial qualities, in which, as well as in their superior attributes, the Lollards bear a very close resemblance to the Puritans of Elizabeth's reign; a moroseness that proscribed all cheerful amusements, an uncharitable malignity that made no distinction in condemning the established clergy, and a narrow prejudice that applied the rules of the Jewish law to modern institutions.[277] Some of their principles were far more dangerous to

which implies an authorized translation. And we may adopt in a great measure Lappenberg's proposition, which follows the above passage: "The numerous versions and paraphrases of the Old and New Testament made those books known to the laity and more familiar to the clergy."

We have seen, a little above, that the laity were not permitted by the Greek Church of the ninth century, and probably before, to read the Scriptures, even in the original. This shows how much more honest and pious the Western Church was before she became corrupted by ambition and by the captivating hope of keeping the laity in servitude by means of ignorance. The translation of the four Books of Kings into French has been published in the "Collection de Documens Inédits," 1841. It is in a northern dialect, but the age seems not satisfactorily ascertained; the close of the eleventh century is the earliest date that can be assigned. Translations into the Provençal by the Waldensian or other heretics were made in the twelfth; several manuscripts of them are in existence, and one has been published by Dr. Gilly. [1848.]

[276] The application of the visions of the Apocalypse to the corruptions of Rome has commonly been said to have been first made by the Franciscan seceders. But it may be traced higher, and is remarkably pointed out by Dante:

"Di voi pastor s'accorse 'l Vangelista,
Quando colei, chi siede sovra l'acque,
Puttaneggiar co' regi a lui fù vista."
"Inferno," cant. xix.

[277] Walsingham, p. 238; Lewis's "Life of Pecock," p. 65. Bishop Pecock's answer to the Lollards of his time contains passages well worthy of Hooker, both for weight of matter and dignity of style, setting forth the necessity and importance of "the moral law of kinde, or moral philosophie," in opposition to those who derive all morality from revelation.

the good order of society, and can not justly be ascribed to the Puritans, though they grew afterward out of the same soil. Such was the notion, which is imputed also to the Albigenses, that civil magistrates lose their right to govern by committing sin, or, as it was quaintly expressed in the seventeenth century, that dominion is founded in grace. These extravagances, however, do not belong to the learned and politic Wicliffe, however they might be adopted by some of his enthusiastic disciples.[278] Fostered by the general ill will toward the Church, his principles made vast progress in England, and, unlike those of earlier sectaries, were embraced by men of rank and civil influence. Notwithstanding the check they sustained by the sanguinary law of Henry IV, it is highly probable that multitudes secretly cherished them down to the era of the Reformation.

From England the spirit of religious innovation was propagated into Bohemia; for though John Huss was very far from embracing all the doctrinal system of Wicliffe, it is manifest that his zeal had been quickened by the writings of that reformer.[279] Inferior to the Englishman in ability, but exciting greater attention by his constancy and sufferings, as well as by the memorable war which his ashes kindled, the Bohemian martyr was even more eminently the precursor of the Reformation. But still, regarding these dissensions merely in a temporal light, I can not assign any beneficial effect to the schism of the Hussites, at least in its immediate results, and in the country where it appeared. Though some degree of sympathy with their cause is inspired by resentment at the ill faith of their adversaries, and by the associations of civil and religious liberty, we can not estimate the Taborites and other sectaries of that description but as ferocious and desperate fanatics.[280] Perhaps beyond the confines of Bohemia more substantial good may have been produced by the influence of its reformation, and a better tone of morals inspired into Germany. But I must again repeat that upon this obscure and ambiguous subject I assert nothing definitely, and

This great man fell afterward under the displeasure of the Church for propositions, not indeed heretical, but repugnant to her scheme of spiritual power. He asserted, indirectly, the right of private judgment, and wrote on theological subjects in English, which gave much offence. In fact, Pecock seems to have hoped that his acute reasoning would convince the people, without requiring an implicit faith. But he greatly misunderstood the principle of an infallible church. Lewis's "Life of Pecock" does justice to his character, which, I need not say, is unfairly represented by such historians as Collier, and such antiquaries as Thomas Hearne.

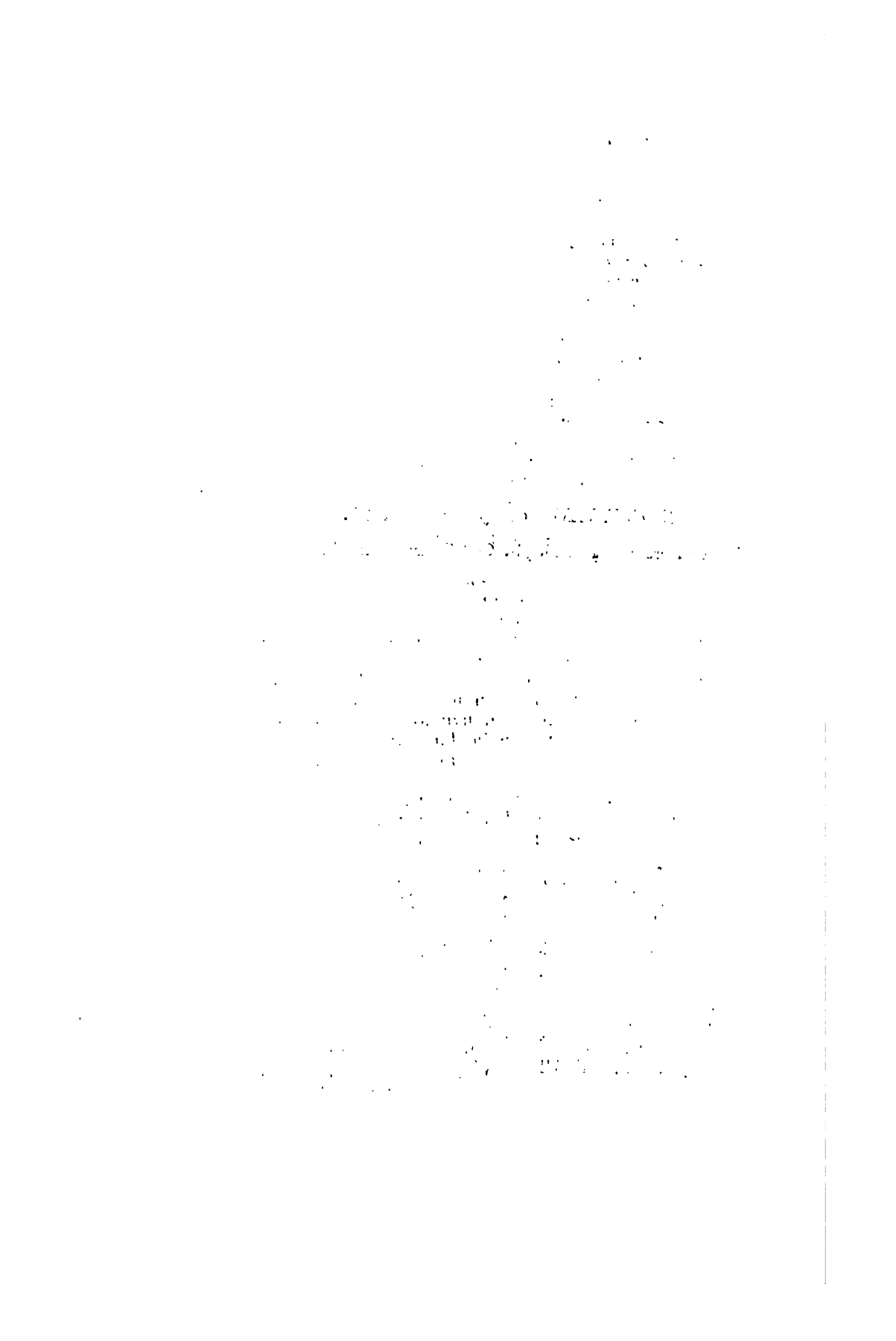
[278] Lewis's "Life of Wicliffe," p. 115; Lenfant, "Hist. du Concile de Constance," tome i, p. 213.

[279] Huss does not appear to have rejected any of the peculiar tenets of popery. (Lenfant, p. 414.) He embraced, like Wicliffe, the predestinarian system of Augustine, without pausing at any of those inferences, apparently deducible from it, which, in the heads of enthusiasts, may produce such extensive mischief. These were maintained by Huss (id., p. 328), though not perhaps so crudely as by Luther. Everything relative to the history and doctrine of Huss and his followers will be found in Lenfant's three works on the Councils of Pisa, Constance, and Basle.

[280] Lenfant, "Hist. de la Guerre des Hussites et du Concile de Basle"; Schmidt, "Hist. des Allemands," tome v.

THE BURNING OF JOHN HUSS.

Photogravure from a painting by Carl Gustave Hellquist.



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little with confidence. The tendencies of religious dissent in the four ages before the Reformation appear to have generally conduced toward the moral improvement of mankind; and facts of this nature occupy a far greater space in a philosophical view of society during that period than we might at first imagine; but every one who is disposed to prosecute this inquiry will assign their character according to the result of his own investigations.

But the best school of moral discipline which the middle ages afforded was the institution of chivalry. There is something perhaps to allow for the partiality of modern writers upon this interesting subject; yet our most sceptical criticism must assign a decisive influence to this great source of human improvement. The more deeply it is considered, the more we shall become sensible of its importance.

There are, if I may so say, three powerful spirits which have from time to time moved over the face of the waters, and given a predominant impulse to the moral sentiments and energies of mankind. These are the spirits of liberty, of religion, and of honour. It was the principal business of chivalry to animate and cherish the last of these three. And whatever high magnanimous energy the love of liberty or religious zeal has ever imparted was equalled by the exquisite sense of honour which this institution preserved.

It appears probable that the custom of receiving arms at the age of manhood with some solemnity was of immemorial antiquity among the nations that overthrew the Roman Empire. For it is mentioned by Tacitus to have prevailed among their German ancestors; and his expressions might have been used with no great variation to describe the actual ceremonies of knighthood.[281] There was even in that remote age a sort of public trial as to the fitness of the candidate, which, though perhaps confined to his bodily strength and activity, might be the germ of that refined investigation which was thought necessary in the perfect stage of chivalry. Proofs, though rare and incidental, might be adduced to show that in the time of Charlemagne, and even earlier, the sons of monarchs at least did not assume manly arms without a regular investiture. And in the eleventh century it is evident that this was a general practice.[282]

[281] Nihil neque publicæ neque privatæ rei nisi armati agunt. Sed arma sumere non ante cuiquam moris, quàm civitas suffecturum probaverit. Tum in ipso concilio, vel principum aliquis, vel pater, vel propinquus, scuto frameâque juvenem ornant; hæc apud eos toga, hic primus juventæ honos; ante hoc domûs pars videntur, mox reipublicæ. ("De Moribus German.," c. 13.)

[282] William of Malmesbury says that Alfred conferred knighthood on Athelstan, donatum chlamyde coccineâ, gemmato balteo, ense Saxonico cum vaginâ aureâ (l. ii, c. 6). St. Palaye ("Mémoires sur la Chevalerie," p. 2) mentions other instances, which may also be found in Du Cange's "Glossary," v. Arma, and in his 22d dissertation on Joinville.

This ceremony, however, would perhaps of itself have done little toward forming that intrinsic principle which characterized the genuine chivalry. But in the reign of Charlemagne we find a military distinction that appears, in fact as well as in name, to have given birth to that institution. Certain feudal tenants, and I suppose also allodial proprietors, were bound to serve on horseback, equipped with the coat of mail. These were called Caballarii, from which the word chevaliers is an obvious corruption.[283] But he who fought on horseback, and had been invested with peculiar arms in a solemn manner, wanted nothing more to render him a knight. Chivalry therefore may, in a general sense, be referred to the age of Charlemagne. We may, however, go further, and observe that these distinctive advantages above ordinary combatants were probably the sources of that remarkable valour and that keen thirst for glory which became the essential attributes of a knightly character. For confidence in our skill and strength is the usual foundation of courage; it is by feeling ourselves able to surmount common dangers that we become adventurous enough to encounter those of a more extraordinary nature, and to which more glory is attached. The reputation of superior personal prowess, so difficult to be attained in the course of modern warfare, and so liable to erroneous representations, was always within the reach of the stoutest knight, and was founded on claims which could be measured with much accuracy. Such is the subordination and mutual dependence in a modern army that every man must be content to divide his glory with his comrades, his general, or his soldiers. But the soul of chivalry was individual honour, coveted in so entire and absolute a perfection that it must not be shared with an army or a nation. Most of the virtues it inspired were what we may call independent, as opposed to those which are founded upon social relations. The knights-errant of romance perform their best exploits from the love of renown, or from a sort of abstract sense of justice, rather than from any solicitude to promote the happiness of mankind. If these springs of action are less generally beneficial, they are, however, more connected with elevation of character than the systematical prudence of men accustomed to social life. This solitary and independent spirit of chivalry, dwelling, as it were, upon a rock, and disdaining injustice or falsehood from a consciousness of internal dignity, without any calculation of their consequences, is not unlike what we sometimes read of Arabian chiefs or the North American Indians.[284] These nations, so widely remote from each other, seem

[283] Comites et vassalli nostri qui beneficia habere noscuntur, et caballarii omnes ad placitum nostrum veniant bene preparati. (Capitularia, A. D. 807, in Baluze. tome i, p. 460.)

[284] We must take for this the more

to partake of that moral energy which, among European nations far remote from both of them, was excited by the spirit of chivalry. But the most beautiful picture that was ever portrayed of this character is the Achilles of Homer, the representative of chivalry in its most general form, with all its sincerity and unyielding rectitude, all its courtesies and munificence. Calmly indifferent to the cause in which he is engaged, and contemplating with a serious and unshaken look the premature death that awaits him, his heart only beats for glory and friendship. To this sublime character, bating that imaginary completion by which the creations of the poet, like those of the sculptor, transcend all single works of Nature, there were probably many parallels in the ages of chivalry; especially before a set education and the refinements of society had altered a little the natural unadulterated warrior of a ruder period. One illustrious example from this earlier age is the Cid Ruy Diaz, whose history has fortunately been preserved much at length in several chronicles of ancient date and in one valuable poem; and though I will not say that the Spanish hero is altogether a counterpart of Achilles in gracefulness and urbanity, yet was he inferior to none that ever lived in frankness, honour, and magnanimity.[285]

In the first state of chivalry it was closely connected with the military service of fiefs. The Caballarii in the capitularies, the Milites of the eleventh and twelfth centuries, were landholders who followed their lord or sovereign into the field. A certain value of land was termed in England a knight's fee, or in Normandy feudum loricæ, fief de haubert, from the coat of mail which it entitled and required the tenant to wear; a military tenure was said to be by service in chivalry. To serve as knights, mounted and equipped, was the common duty of vassals; it implied no personal merit, it gave of itself a claim to no civil privi-

favourable representations of the Indian nations. A deteriorating intercourse with Europeans, or a race of European extraction, has tended to efface those virtues which possibly were rather exaggerated by earlier writers.

[285] Since this passage was written I have found a parallel drawn by Mr. Sharon Turner, in his valuable "History of England," between Achilles and Richard Cœur de Lion; the superior justness of which I readily acknowledge. The real hero does not indeed excite so much interest in me as the poetical; but the marks of resemblance are very striking, whether we consider their passions, their talents, their virtues, their vices, or the waste of their heroism.

The two principal persons in the "Iliad," if I may digress into the observation, appear to me representatives of the heroic character in its two leading varieties; of the energy which has its sole principle of action within itself, and of that which borrows its impulse from external relations; of the spirit of honour, in short, and of patriotism. As every sentiment of Achilles is independent and self-supported, so those of Hector all bear reference to his kindred and his country. The ardour of the one might have been extinguished for want of nourishment in Thessaly; but that of the other might, we fancy, have never been kindled but for the dangers of Troy. Peace could have brought no delight to the one but from the memory of war; war had no alleviation to the other but from the images of peace. Compare, for example, the two speeches, beginning Il. Z, 441, and Il. II, 49; or rather compare the two characters throughout the "Iliad." So wonderfully were those two great springs of human sympathy, variously interesting according to the diversity of our tempers, first touched by that ancient patriarch,

"à quo, ceu fonte perenni,
Vatum Pieriis ora rigantur aquis."

leges. But this knight-service founded upon a feudal obligation is to be carefully distinguished from that superior chivalry, in which all was independent and voluntary. The latter, in fact, could hardly flourish in its full perfection till the military service of feudal tenure began to decline—namely, in the thirteenth century. The origin of this personal chivalry I should incline to refer to the ancient usage of voluntary commendation, which I have mentioned in a former chapter. Men commended themselves—that is, did homage and professed attachment to a prince or lord—generally, indeed, for protection or the hope of reward, but sometimes probably for the sake of distinguishing themselves in his quarrels. When they received pay, which must have been the usual case, they were literally his soldiers, or stipendiary troops. Those who could afford to exert their valour without recompense were like the knights of whom we read in romance, who served a foreign master through love, or thirst of glory, or gratitude. The extreme poverty of the lower nobility, arising from the subdivision of fiefs, and the politic generosity of rich lords, made this connection as strong as that of territorial dependence. A younger brother, leaving the paternal estate, in which he took a slender share, might look to wealth and dignity in the service of a powerful count. Knighthood, which he could not claim as his legal right, became the object of his chief ambition. It raised him in the scale of society, equalling him in dress, in arms, and in title, to the rich landholders. As it was due to his merit, it did much more than equal him to those who had no pretensions but from wealth, and the territorial knights became by degrees ashamed of assuming the title till they could challenge it by real desert.

This class of noble and gallant cavaliers serving commonly for pay, but on the most honourable footing, became far more numerous through the crusades; a great epoch in the history of European society. In these wars, as all feudal service was out of the question, it was necessary for the richer barons to take into their pay as many knights as they could afford to maintain; speculating, so far as such motives operated, on an influence with the leaders of the expedition, and on a share of plunder, proportioned to the number of their followers. During the period of the crusades we find the institution of chivalry acquire its full vigour as an order of personal nobility; and its original connection with feudal tenure, if not altogether effaced, became in a great measure forgotten in the splendour and dignity of the new form which it wore.

The crusaders, however, changed in more than one respect the character of chivalry. Before that epoch it appears to have had no particular reference to religion. Ingulfus, indeed, tells

us that the Anglo-Saxons preceded the ceremony of investiture by a confession of their sins and other pious rites, and they received the order at the hands of a priest, instead of a knight. But this was derided by the Normans as effeminacy, and seems to have proceeded from the extreme devotion of the English before the conquest.[286] We can hardly perceive, indeed, why the assumption of arms to be used in butchering mankind should be treated as a religious ceremony. The clergy, to do them justice, constantly opposed the private wars in which the courage of those ages wasted itself, and all bloodshed was subject in strictness to a canonical penance. But the purposes for which men bore arms in a crusade so sanctified their use that chivalry acquired the character as much of a religious as a military institution. For many centuries the recovery of the Holy Land was constantly at the heart of a brave and superstitious nobility, and every knight was supposed at his creation to pledge himself, as occasion should arise, to that cause. Meanwhile the defence of God's law against infidels was his primary and standing duty. A knight, whenever present at mass, held the point of his sword before him while the Gospel was read, to signify his readiness to support it. Writers of the middle ages compare the knightly to the priestly character in an elaborate parallel, and the investiture of the one was supposed analogous to the ordination of the other. The ceremonies upon this occasion were almost wholly religious. The candidate passed nights in prayer among priests in a church; he received the sacraments; he entered into a bath, and was clad with a white robe, in allusion to the presumed purification of his life; his sword was solemnly blessed; everything, in short, was contrived to identify his new condition with the defence of religion, or at least of the Church.[287]

To this strong tincture of religion which entered into the composition of chivalry from the twelfth century was added another ingredient equally distinguishing. A great respect for the female sex had always been a remarkable characteristic of the northern nations. The German women were high-spirited and virtuous; qualities which might be causes or consequences of the veneration with which they were regarded. I am not sure that we could trace very minutely the condition of women for the period between the subversion of the Roman Empire and the first crusade; but apparently man did not grossly abuse his superiority; and in point of civil rights, and even as to the in-

[286] Ingulfus, in Gale, XV "Scriptores," tome i, p. 70. William Rufus, however, was knighted by Archbishop Lanfranc, which looks as if the ceremony was not absolutely repugnant to the Norman practice.

[287] Du Cange, v. Miles, and 22d Dissertation on Joinville, St. Palaye, "Mém. sur la Chevalerie," part ii. A curious original illustration of this, as well as of other chivalrous principles, will be found in "L'Ordene de Chevalerie," a long metrical romance published in Barbazan's "Fabliaux," tome i, p. 59 (edit. 1808).

heritance of property, the two sexes were placed perhaps as nearly on a level as the nature of such warlike societies would admit. There seems, however, to have been more roughness in the social intercourse between the sexes than we find in later periods. The spirit of gallantry which became so animating a principle of chivalry must be ascribed to the progressive refinement of society during the twelfth and two succeeding centuries. In a rude state of manners, as among the lower people in all ages, woman has not full scope to display those fascinating graces by which Nature has designed to counterbalance the strength and energy of mankind. Even where those jealous customs that degrade alike the two sexes have not prevailed, her lot is domestic seclusion; nor is she fit to share in the boisterous pastimes of drunken merriment to which the intercourse of an unpolished people is confined. But as a taste for the more elegant enjoyments of wealth arises, a taste which it is always her policy and her delight to nourish, she obtains an ascendency at first in the lighter hour, and from thence in the serious occupations of life. She chases, or brings into subjection, the god of wine, a victory which might seem more ignoble were it less difficult, and calls in the aid of divinities more propitious to her ambition. The love of becoming ornament is not perhaps to be regarded in the light of vanity; it is rather an instinct which woman has received from Nature to give effect to those charms that are her defence; and when commerce began to minister more effectually to the wants of luxury, the rich furs of the North, the gay silks of Asia, the wrought gold of domestic manufacture, illumined the halls of chivalry, and cast, as if by the spell of enchantment, that ineffable grace over beauty which the choice and arrangement of dress are calculated to bestow. Courtesy had always been the proper attribute of knighthood; protection of the weak its legitimate duty; but these were heightened to a pitch of enthusiasm when woman became their object. There was little jealousy shown in the treatment of that sex, at least in France, the fountain of chivalry; they were present at festivals, at tournaments, and sat promiscuously in the halls of their castle. The romance of Perceforest (and romances have always been deemed good witnesses as to manners) tells of a feast where eight hundred knights had each of them a lady eating off his plate.[288] For to eat off the same plate was a usual mark of gallantry or friendship.

Next therefore, or even equal to devotion, stood gallantry among the principles of knighthood. But all comparison be-

[288] Y eut huit cens chevaliers séant à table; et si n'y eust celui qui n'eust une dame ou une pucelle à son ecuelle. In Launcelot du Lac, a lady, who was troubled with a jealous husband, complains that it was a long time since a knight had eaten off her plate. (Le Grand, tome i, p. 24.)

tween the two was saved by blending them together. The love of God and the ladies was enjoined as a single duty. He who was faithful and true to his mistress was held sure of salvation in the theology of castles, though not of cloisters.[289] Froissart announces that he had undertaken a collection of amorous poetry with the help of God and of love; and Boccaccio returns thanks to each for their assistance in the "Decameron." The laws sometimes united in this general homage to the fair. "We will," says James II of Aragon, "that every man, whether knight or no, who shall be in company with a lady, pass safe and unmolested, unless he be guilty of murder."[290] Louis II, Duke of Bourbon, instituting the order of the Golden Shield, enjoins his knights to honour above all the ladies, and not to permit any one to slander them, "because from them after God comes all the honour that men can acquire."[291]

The gallantry of those ages, which was very often adulterous, had certainly no right to profane the name of religion; but its union with valour was at least more natural, and became so intimate that the same word has served to express both qualities. In the French and English wars especially the knights of each country brought to that serious conflict the spirit of romantic attachment which had been cherished in the hours of peace. They fought at Poitiers or Verneuil as they had fought at tournaments, bearing over their armour scarfs and devices as the livery of their mistresses, and asserting the paramount beauty of her they served in vaunting challenges toward the enemy. Thus in the middle of a keen skirmish at Cherbourg the squadrons remained motionless, while one knight challenged to a single combat the most amorous of the adversaries. Such a defiance was soon accepted, and the battle only recommenced when one of the champions had lost his life for his love.[292] In the first campaign of Edward's war some young English knights wore a covering over one eye, vowing, for the sake of their ladies, never to see with both till they should have signalized their prowess in the field.[293] These extravagances of chivalry are so common that they form part of its general character, and prove how far a course of action which depends upon the impulses of sentiment may come to deviate from common sense.

It can not be presumed that this enthusiastic veneration, this devotedness in life and death, were wasted upon ungrateful natures. The goddesses of that idolatry knew too well the value

[289] Le Grand, "Fabliaux," tome iii, p. 438; St. Palaye, tome i, p. 41. I quote St. Palaye's "Mémoires" from the first edition in 1759, which is not the best.

[290] Statuimus, quod omnis homo, sive miles sive alius, qui iverit cum dominâ generosâ, salvus sit atque securus, nisi fuerit homicida. (De Marca, "Marca Hispanica," p. 1428.)

[291] Le Grand, tome i, p. 120; St. Palaye, tome i, pp. 13, 134, 221; "Fabliaux," "Romances," etc., passim.

[292] St. Palaye, p. 222.

[293] Froissart, p. 33.

of their worshippers. There has seldom been such adamant about the female heart as can resist the highest renown for valour and courtesy, united with the steadiest fidelity. "He loved," says Froissart of Eustace d'Auberthicourt, "and afterward married Lady Isabel, daughter of the Count of Juliers. This lady, too, loved Lord Eustace for the great exploits in arms which she heard told of him, and she sent him horses and loving letters, which made the said Lord Eustace more bold than before, and he wrought such feats of chivalry that all in his company were gainers." [294] It were to be wished that the sympathy of love and valour had always been as honourable. But the morals of chivalry, we can not deny, were not pure. In the amusing fictions which seem to have been the only popular reading of the middle ages, there reigns a licentious spirit, not of that slighter kind which is usual in such compositions, but indicating a general dissoluteness in the intercourse of the sexes. This has often been noticed of Boccaccio and the early Italian novelists; but it equally characterized the tales and romances of France, whether metrical or in prose, and all the poetry of the Troubadours.[295] The violation of marriage vows passes in them for an incontestable privilege of the brave and the fair; and an accomplished knight seems to have enjoyed as undoubted prerogatives, by general consent of opinion, as were claimed by the brilliant courtiers of Louis XV.

But neither that emulous valour which chivalry excited, nor the religion and gallantry which were its animating principles, alloyed as the latter were by the corruption of those ages, could have rendered its institution materially conducive to the moral improvement of society. There were, however, excellences of a very high class which it equally encouraged. In the books professedly written to lay down the duties of knighthood, they appear to spread over the whole compass of human obligations. But these, like other books of morality, strain their schemes of perfection far beyond the actual practice of mankind. A juster estimate of chivalrous manners is to be deduced from romances. Yet in these, as in all similar fictions, there must be a few ideal touches beyond the simple truth of character; and the picture can only be interesting when it ceases to present images of mediocrity or striking imperfection. But they referred their models of fictitious heroism to the existing standard of moral approbation; a rule which, if it generally falls short of what reason and religion prescribe, is always beyond the average tenor of human conduct. From these and from history itself we may infer the

[294] St. Palaye, p. 268.

[295] The romances will speak for themselves; and the character of the Provençal morality may be collected from Millot, "Hist. des Troubadours," passim; and from Sismondi, "Littérature du Midi," tome i, p. 179, etc. See too St. Palaye, tome ii, pp. 62 and 68.

tendency of chivalry to elevate and purify the moral feelings. Three virtues may particularly be noticed as essential in the estimation of mankind to the character of a knight—loyalty, courtesy, and munificence.

The first of these in its original sense may be defined, fidelity to engagements; whether actual promises, or such tacit obligations as bound a vassal to his lord and a subject to his prince. It was applied also, and in the utmost strictness, to the fidelity of a lover toward the lady he served. Breach of faith, and especially of an express promise, was held a disgrace that no valour could redeem. False, perjured, disloyal, recreant, were the epithets which he must be compelled to endure who had swerved from a plighted engagement even toward an enemy. This is one of the most striking changes produced by chivalry. Treachery, the usual vice of savage as well as corrupt nations, became infamous during the vigour of that discipline. As personal rather than national feelings actuated its heroes, they never felt that hatred, much less that fear of their enemies, which blind men to the heinousness of ill faith. In the wars of Edward III, originating in no real animosity, the spirit of honourable as well as courteous behaviour toward the foe seems to have arrived at its highest point. Though avarice may have been the primary motive of ransoming prisoners instead of putting them to death, their permission to return home on the word of honour in order to procure the stipulated sum—an indulgence never refused—could only be founded on experienced confidence in the principles of chivalry.[296]

A knight was unfit to remain a member of the order if he violated his faith; he was ill acquainted with its duties if he proved wanting in courtesy. This word expressed the most highly refined good breeding, founded less upon a knowledge of ceremonious politeness, though this was not to be omitted, than on the spontaneous modesty, self-denial, and respect for others which ought to spring from his heart. Besides the grace which this beautiful virtue threw over the habits of social life, it softened down the natural roughness of war, and gradually introduced that indulgent treatment of prisoners which was almost unknown to antiquity. Instances of this kind are continual in the later period of the middle ages. An Italian writer blames the soldier who wounded Eccelin, the famous tyrant of Padua, after he was taken. "He deserved," says he, "no praise, but rather the greatest infamy for his baseness; since it is as vile an act to wound a prisoner, whether noble or otherwise, as to strike a dead body."[297] Considering the crimes of Eccelin,

[296] St. Palaye, part ii.

[297] Non laudem meruit, sed summæ potius opprobrium vilitatis; nam idem facinus est putandum captum nobilem vel ignobilem offendere, vel ferire, quàm gladio cædere cadaver. (Rolandinus, in "Script. Rer. Ital.," tome viii, p. 351.

this sentiment is a remarkable proof of generosity. The behaviour of Edward III to Eustace de Ribaumont, after the capture of Calais, and that, still more exquisitely beautiful, of the Black Prince to his royal prisoner at Poitiers, are such eminent instances of chivalrous virtue that I omit to repeat them only because they are so well known. Those great princes, too, might be imagined to have soared far above the ordinary track of mankind. But, in truth, the knights who surrounded them and imitated their excellences were only inferior in opportunities of displaying the same virtue. After the battle of Poitiers, "the English and Gascon knights," says Froissart, "having entertained their prisoners, went home each of them with the knights or squires he had taken, whom he then questioned upon their honour what ransom they could pay without inconvenience, and easily gave them credit; and it was common for men to say that they would not straiten any knight or squire so that he should not live well and keep up his honour." [298] Liberality, indeed, and disdain of money might be reckoned, as I have said, among the essential virtues of chivalry. All the romances inculcate the duty of scattering their wealth with profusion, especially toward minstrels, pilgrims, and the poorer members of their own order. The last, who were pretty numerous, had a constant right to succour from the opulent; the castle of every lord who respected the ties of knighthood was open with more than usual hospitality to the traveller whose armour announced his dignity, though it might also conceal his poverty.[299]

Valour, loyalty, courtesy, munificence, formed collectively the character of an accomplished knight, so far as was displayed in the ordinary tenor of his life, reflecting these virtues as an unsullied mirror. Yet something more was required for the perfect idea of chivalry, and enjoined by its principles; an active sense of justice, an ardent indignation against wrong, a determination of courage to its best end, the prevention or redress of injury. It grew up as a salutary antidote in the midst of poisons, while scarce any law but that of the strongest obtained regard, and the rights of territorial property, which are only rights as they conduce to general good, became the means of general oppression. The real condition of society, it has sometimes been thought, might suggest stories of knight-errantry, which were wrought up into the popular romances of the mid-

[298] Froissart, l. i, c. 161. He remarks in another place that all English and French gentlemen treat their prisoners well; not so the Germans, who put them in fetters, in order to extort more money (c. 136).

[299] St. Palaye, part iv, pp. 312, 367, etc. Le Grand, "Fabliaux," tome i, pp. 115, 167. It was the custom in Great Britain (says the romance of Perceforest, speaking, of course, in an imaginary history), that noblemen and ladies placed a helmet on the highest point of their castles, as a sign that all persons of such rank travelling that road might boldly enter their houses like their own. (St. Palaye, p. 367.)

dle ages. A baron, abusing the advantage of an inaccessible castle in the fastnesses of the Black Forest or the Alps, to pillage the neighbourhood and confine travellers in his dungeon, though neither a giant nor a Saracen, was a monster not less formidable, and could perhaps as little be destroyed without the aid of disinterested bravery. Knight-errantry, indeed, as a profession can not rationally be conceived to have had any existence beyond the precincts of romance. Yet there seems no improbability in supposing that a knight, journeying through uncivilized regions in his way to the Holy Land or to the court of a foreign sovereign, might find himself engaged in adventures not very dissimilar to those which are the theme of romance. We can not, indeed, expect to find any historical evidence of such incidents.

The characteristic virtues of chivalry bear so much resemblance to those which Eastern writers of the same period extol that I am a little disposed to suspect Europe of having derived some improvement from imitation of Asia. Though the crusades began in abhorrence of infidels, this sentiment wore off in some degree before their cessation; and the regular intercourse of commerce, sometimes of alliance, between the Christians of Palestine and the Saracens, must have removed part of the prejudice, while experience of their enemy's courage and generosity in war would with those gallant knights serve to lighten the remainder. The romancers expatiate with pleasure on the merits of Saladin, who actually received the honour of knighthood from Hugh of Tabaria, his prisoner. An ancient poem, entitled the "Order of Chivalry," is founded upon this story, and contains a circumstantial account of the ceremonies, as well as duties, which the institution required.[300] One or two other instances of a similar kind bear witness to the veneration in which the name of knight was held among the Eastern nations. And certainly the Mohammedan chieftains were for the most part abundantly qualified to fulfil the duties of European chivalry. Their manners had been polished and courteous, while the Western kingdoms were comparatively barbarous.

The principles of chivalry were not, I think, naturally productive of many evils. For it is unjust to class those acts of oppression or disorder among the abuses of knighthood, which were committed in spite of its regulations, and were only prevented by them from becoming more extensive. The license of times so imperfectly civilized could not be expected to yield to institutions, which, like those of religion, fell prodigiously short in their practical result of the reformation which they were designed to work. Man's guilt and frailty have never admitted

[300] "Fabliaux de Barbasan," tome i.

more than a partial corrective. But some bad consequences may be more fairly ascribed to the very nature of chivalry. I have already mentioned the dissoluteness which almost unavoidably resulted from the prevailing tone of gallantry. And yet we sometimes find in the writings of those times a spirit of pure but exaggerated sentiment; and the most fanciful refinements of passion are mingled by the same poets with the coarsest immorality. An undue thirst for military renown was another fault that chivalry must have nourished; and the love of war, sufficiently pernicious in any shape, was more founded, as I have observed, on personal feelings of honour, and less on public spirit, than in the citizens of free states. A third reproach may be made to the character of knighthood, that it widened the separation between the different classes of society, and confirmed that aristocratical spirit of high birth, by which the large mass of mankind were kept in unjust degradation. Compare the generosity of Edward III toward Eustace de Ribaumont at the siege of Calais with the harshness of his conduct toward the citizens. This may be illustrated by a story from Joinville, who was himself imbued with the full spirit of chivalry, and felt like the best and bravest of his age. He is speaking of Henry, Count of Champagne, who acquired, says he, very deservedly, the surname of Liberal, and adduces the following proof of it: A poor knight implored of him on his knees one day as much money as would serve to marry his two daughters. One Arthault de Nogent, a rich burgess, willing to rid the count of this importunity, but rather awkward, we must own, in the turn of his argument, said to the petitioner, "My lord has already given away so much that he has nothing left." "Sir Villain," replied Henry, turning round to him, "you do not speak truth in saying that I have nothing left to give, when I have got yourself. Here, Sir Knight, I give you this man and warrant your possession of him." Then, says Joinville, the poor knight was not at all confounded, but seized hold of the burgess fast by the collar, and told him he should not go till he had ransomed himself. And in the end he was forced to pay a ransom of five hundred pounds. The simple-minded writer who brings this evidence of the Count of Champagne's liberality is not at all struck with the facility of a virtue that is exercised at the cost of others.[801]

There is perhaps enough in the nature of this institution and its congeniality to the habits of a warlike generation to account for the respect in which it was held throughout Europe. But several collateral circumstances served to invigorate its spirit. Besides the powerful efficacy with which the poetry and romance

[801] Joinville in "Collection des Mémoires," tome i, p. 43.

of the middle ages stimulated those susceptible minds which were alive to no other literature, we may enumerate four distinct causes tending to the promotion of chivalry.

The first of these was the regular scheme of education, according to which the sons of gentlemen from the age of seven years were brought up in the castles of superior lords, where they at once learned the whole discipline of their future profession, and imbibed its emulous and enthusiastic spirit. This was an inestimable advantage to the poorer nobility, who could hardly otherwise have given their children the accomplishments of their station. From seven to fourteen these boys were called pages or varlets; at fourteen they bore the name of esquire. They were instructed in the management of arms, in the art of horsemanship, in exercise of strength and activity. They became accustomed to obedience and courteous demeanour, serving their lord or lady in offices which had not yet become derogatory to honourable birth, and striving to please visitors, and especially ladies, at the ball or banquet. Thus placed in the centre of all that could awaken their imaginations, the creed of chivalrous gallantry, superstition, or honour must have made indelible impressions. Panting for the glory which neither their strength nor the established rules permitted them to anticipate, the young scions of chivalry attended their masters to the tournament, and even to the battle, and riveted with a sigh the armour they were forbidden to wear.[802]

It was the constant policy of sovereigns to encourage this institution, which furnished them with faithful supports, and counteracted the independent spirit of feudal tenure. Hence they displayed a lavish magnificence in festivals and tournaments, which may be reckoned a second means of keeping up the tone of chivalrous feeling. The Kings of France and England held solemn or plenary courts at the great festivals, or at other times, where the name of knight was always a title to admittance; and the mask of chivalry, if I may use the expression, was acted in pageants and ceremonies fantastical enough in our apprehension, but well calculated for those heated understandings. Here the peacock and the pheasant, birds of high fame and romance, received the homage of all true knights.[803] The most singular festival of this kind was that celebrated by Philip, Duke of Burgundy, in 1453. In the midst of the banquet a pageant was introduced, representing the calamitous state of religion in consequence of the recent capture of Constantinople. This was followed by the appearance of a pheasant, which was laid before the duke, and to which the knights present addressed their vows

[802] St. Palaye, part i. Joinville. St. Palaye, tome i, pp. 87, 118.
[803] Du Cange, 5me Dissertation sur Le Grand, tome i, p. 14.

to undertake a crusade, in the following very characteristic preamble: "I swear before God my Creator in the first place, and the glorious Virgin, his mother, and next before the ladies and the pheasant."[304] Tournaments were a still more powerful incentive to emulation. These may be considered to have arisen about the middle of the eleventh century; for though every martial people have found diversion in representing the image of war, yet the name of tournaments, and the laws that regulated them, can not be traced any higher.[305] Every scenic performance of modern times must be tame in comparison of these animating combats. At a tournament the space inclosed within the lists was surrounded by sovereign princes and their noblest barons, by knights of established renown, and all that rank and beauty had most distinguished among the fair. Covered with steel, and known only by their emblazoned shield or by the favours of their mistresses, a still prouder bearing, the combatants rushed forward to a strife without enmity, but not without danger. Though their weapons were pointless, and sometimes only of wood, though they were bound by the laws of tournament to strike only upon the strong armour of the trunk, or, as it was called, between the four limbs, those impetuous conflicts often terminated in wounds and death. The Church uttered her excommunications in vain against so wanton an exposure to peril; but it was more easy for her to excite than to restrain that martial enthusiasm. Victory in a tournament was little less glorious, and perhaps at the moment more exquisitely felt, than in the field, since no battle could assemble such witnesses of valour. "Honour to the sons of the brave!" resounded amid the din of martial music from the lips of the minstrels, as the conqueror advanced to receive the prize from his queen or his mistress, while the surrounding multitude acknowledged in his prowess of that day an augury of triumphs that might in more serious contests be blended with those of his country.[306]

Both honorary and substantial privileges belonged to the condition of knighthood, and had, of course, a material tendency to preserve its credit. A knight was distinguished abroad by his crested helmet, his weighty armour, whether of mail or plate, bearing his heraldic coat, by his gilded spurs, his horse barded with iron, or clothed in housing of gold; at home, by richer silks and more costly furs than were permitted to squires, and by the appropriated colour of scarlet. He was addressed by

[304] St. Palaye, tome i, p. 191.

[305] Godfrey de Preuilly, a French knight, is said by several contemporary writers to have invented tournaments; which must of course be understood in a limited sense. The Germans ascribe them to Henry the Fowler; but this, according to Du Cange, is on no authority. (6me Dissertation sur Joinville.)

[306] St. Palaye, part ii and part iii, au commencement. Du Cange, Dissert. 6 and 7: and "Glossary," v. Torneamentum. Le Grand, "Fabliaux," tome i, p. 184.

titles of more respect.[307] Many civil officers, by rule or usage, were confined to his order. But perhaps its chief privilege was to form one distinct class of nobility extending itself throughout a great part of Europe, and almost independent, as to its rights and dignities, of any particular sovereign. Whoever had been legitimately dubbed a knight in one country became, as it were, a citizen of universal chivalry, and might assume most of its privileges in any other. Nor did he require the act of a sovereign to be thus distinguished. It was a fundamental principle that any knight might confer the order; responsible only in his own reputation if he used lightly so high a prerogative. But as all the distinctions of rank might have been confounded, if this right had been without limit, it was an equally fundamental rule that it could only be exercised in favour of gentlemen.[308]

The privileges annexed to chivalry were of peculiar advantage to the vavassors, or inferior gentry, as they tended to counterbalance the influence which territorial wealth threw into the scale of their feudal suzerains. Knighthood brought these two

[307] St. Palaye, part iv. Selden's "Titles of Honour," p. 806. There was not, however, so much distinction in England as in France.

[308] St. Palaye, vol. i, p. 70, has forgotten to make this distinction. It is, however, capable of abundant proof. Gunther, in his poem called "Ligurinus," observes of the Milanese republic:

"Quoslibet ex humili vulgo, quod Gallia fœdum
Judicat, accingi gladio concedit equestri."

Otho of Frisingen expresses the same in prose. It is said, in the "Establishments of St. Louis," that if any one not being a gentleman on the father's side was knighted, the king or baron in whose territory he resides may hack off his spurs on a dunghill (c. 130). The Count de Nevers, having knighted a person who was not noble ex parte paternâ, was fined in the king's court. The king, however (Philip III) confirmed the knighthood. (Daniel, "Hist. de la Milice Françoise," p. 98.) Fuit propositum (says a passage quoted by Daniel) contra comitem Flandriensem, quod non poterat, nec debebat facere de villano militem, sine auctoritate regis, ibid. Statuimus, says James I of Aragon, in 1234, ut nullus faciat militem nisi filium militis. ("Marca Hispanica," p. 1428.) Selden ("Titles of Honour," p. 592) produces other evidence to the same effect. And the Emperor Sigismund having conferred knighthood, during his stay in Paris in 1415, on a person incompetent to receive it for want of nobility, the French were indignant at his conduct, as an assumption of sovereignty. (Villaret, tome xiii, p. 397.) We are told, however, by Giannone (l. xx, c. 3), that nobility was not, in fact, required for receiving chivalry at Naples, though it was in France.

The privilege of every knight to associate qualified persons to the order at his pleasure, lasted very long in France; certainly down to the English wars of Charles VII (Monstrelet, part ii, folio 50), and, if I am not mistaken, down to the time of Francis I. But in England, where the spirit of independence did not prevail so much among the nobility, it soon ceased. Selden mentions one remarkable instance in a writ of the twenty-ninth of Henry III, summoning tenants in capite to come and receive knighthood from the king, ad recipiendum a nobis arma militaria; and tenants of mesne lords to be knighted by whomsoever they pleased, ad recipiendum arma de quibuscunque voluerint. ("Titles of Honour," p. 792.) But soon after this time, it became an established principle of our law that no subject can confer knighthood except by the king's authority. Thus Edward III grants to a burgess of Lyndia in Guienne (I know not what place this is) the privilege of receiving that rank at the hands of any knight, his want of noble birth notwithstanding. (Rymer, tome v, p. 623.) It seems, however, that a different law obtained in some places. Twenty-three of the chief inhabitants of Beaucaire, partly knights, partly burgesses, certified in 1298 that the immemorial usage of Beaucaire and of Provence had been for burgesses to receive knighthood at the hands of noblemen without the prince's permission. (Vaissette, "Hist de Languedoc," tome iii, p. 530.) Burgesses in the great commercial towns were considered as of a superior class to the roturiers, and possessed a kind of demi-nobility. Charles V appears to have conceded a similar indulgence to the citizens of Paris. (Villaret, tome x, p. 248.)

classes nearly to a level; and it is owing perhaps in no small degree to this institution that the lower nobility saved themselves, notwithstanding their poverty, from being confounded with the common people.

Lastly, the customs of chivalry were maintained by their connection with military service. After armies, which we may call comparatively regular, had superseded in a great degree the feudal militia, princes were anxious to bid high for the service of knights, the best equipped and bravest warriors of the time, on whose prowess the fate of battles was for a long period justly supposed to depend. War brought into relief the generous virtues of chivalry, and gave lustre to its distinctive privileges. The rank was sought with enthusiastic emulation through heroic achievements, to which, rather than to mere wealth and station, it was considered to belong. In the wars of France and England, by far the most splendid period of this institution, a promotion of knights followed every success, besides the innumerable cases where the same honour rewarded individual bravery.[209] It may here be mentioned that an honorary distinction was made between knights-bannerets and bachelors.[210] The former were the richest and best accompanied. No man could properly be a banneret unless he possessed a certain estate, and could bring a certain number of lances into the field.[211] His distinguishing mark was the square banner, carried by a squire at the point of his lance, while the knight-bachelor had only the coronet or pointed pendant. When a banneret was created, the general cut off this pendant to render the banner square.[212] But this distinction, however it elevated the banneret, gave him no claim to military command, except over his own dependents or men at arms. Chandos was still a knight-bachelor when he led part of the Prince of Wales's army into Spain. He first raised his banner at the battle of Navarette; and the narration that Froissart gives of the ceremony will illustrate the manners of

[209] St. Palaye, part iii, passim.

[210] The word bachelor has been sometimes derived from bas chevalier; in opposition to banneret. But this can not be right. We do not find any authority for the expression bas chevalier, nor any equivalent in Latin, baccalaureus certainly not suggesting that sense; and it is strange that the corruption should obliterate every trace of the original term. Bachelor is a very old word, and is used in early French poetry for a young man, as bachelette is for a girl. So also in Chaucer:

"A yonge Squire,
A lover, and a lusty bachelor."

[211] Du Cange, Dissertation 9me sur Joinville. The number of men at arms, whom a banneret ought to command, was properly fifty. But Olivier de la Marche speaks of twenty-five as sufficient; and it appears that, in fact, knights-banneret often did not bring so many.

[212] Ibid. Olivier de la Marche ("Collection des Mémoires," tome viii, p. 337) gives a particular example of this; and makes a distinction between the bachelor created a banneret on account of his estate, and the hereditary banneret, who took a public opportunity of requesting the sovereign to unfold his family banner, which he had before borne wound round his lance. The first was said relever bannière; the second, entrer en bannière. This difference is more fully explained by Daniel, "Hist. de la Milice Françoise," p. 116. Chandos's banner was unfolded, not cut, at Navarette. We read sometimes of esquire-bannerets—that is, of bannerets by descent, not yet knighted.

chivalry and the character of that admirable hero, the conqueror of Du Guesclin and pride of English chivalry, whose fame with posterity has been a little overshadowed by his master's laurels.[313] What seems more extraordinary is, that mere squires had frequently the command over knights. Proofs of this are almost continual in Froissart. But the vast estimation in which men held the dignity of knighthood led them sometimes to defer it for great part of their lives, in hope of signalizing their investiture by some eminent exploit.

These appear to have been the chief means of nourishing the principles of chivalry among the nobility of Europe. But notwithstanding all encouragement, it underwent the usual destiny of human institutions. St. Palaye, to whom we are indebted for so vivid a picture of ancient manners, ascribes the decline of chivalry in France to the profusion with which the order was lavished under Charles VI, to the establishment of the companies of ordonnance by Charles VII, and to the extension of knightly honours to lawyers, and other men of civil occupation, by Francis I.[314] But the real principle of decay was something different from these three subordinate circumstances, unless so far as it may bear some relation to the second. It was the invention of gunpowder that eventually overthrew chivalry. From the time when the use of fire-arms became tolerably perfect the weapons of former warfare lost their efficacy, and physical force was reduced to a very subordinate place in the accomplishments of a soldier. The advantages of a disciplined infantry became more sensible; and the lancers, who continued till almost the end of the sixteenth century to charge in a long line, felt the punishment of their presumption and indiscipline. Even in the wars of Edward III the disadvantageous tactics of chivalry must have been perceptible; but the military art had not been sufficiently studied to overcome the prejudices of men eager for individual distinction. Tournaments became less frequent, and, after the fatal accident of Henry II, were entirely discontinued in France. Notwithstanding the convulsions of the religious wars, the sixteenth century was more tranquil than any that had preceded; and thus a large part of the nobility passed their lives in pacific habits, and if they assumed the honours of chivalry, forgot their natural connection with military prowess. This is far more applicable to England, where, except from the reign of Edward III to that of Henry VI, chivalry, as a military institution, seems not to have found a very congenial soil.[315] To these circumstances, immediately affecting the military condition

[313] Froissart, part i. c. 241.

[314] "Mém. sur la Chevalerie," part v.

[315] The prerogative exercised by the Kings of England of compelling men sufficiently qualified in point of estate to take on them the honour of knighthood was inconsistent with the true spirit of chivalry. This began, according to Lord

of nations, we must add the progress of reason and literature, which made ignorance discreditable even in a soldier, and exposed the follies of romance to a ridicule which they were very ill calculated to endure.

The spirit of chivalry left behind it a more valuable successor. The character of knight gradually subsided in that of gentleman; and the one distinguishes European society in the sixteenth and seventeenth centuries, as much as the other did in the preceding ages. A jealous sense of honour, less romantic, but equally elevated, a ceremonious gallantry and politeness, a strictness in devotional observances, a high pride of birth and feeling of independence upon any sovereign for the dignity it gave, a sympathy for martial honour, though more subdued by civil habits, are the lineaments which prove an indisputable descent. The cavaliers of Charles I were genuine successors of Edward's knights; and the resemblance is much more striking if we ascend to the civil wars of the League. Time has effaced much also of this gentlemanly, as it did before of the chivalrous character. From the latter part of the seventeenth century its vigour and purity have undergone a tacit decay, and yielded, perhaps in every country, to increasing commercial wealth, more diffused instruction, the spirit of general liberty in some, and of servile obsequiousness in others, the modes of life in great cities, and the levelling customs of social intercourse.[316]

Littleton, under Henry III. ("Hist. of Henry II," vol. ii, p. 238.) Independently of this, several causes tended to render England less under the influence of chivalrous principles than France or Germany; such as her comparatively peaceful state, the smaller share she took in the crusades, her inferiority in romances of knight-errantry, but, above all, the democratical character of her laws and government. Still, this is only to be understood relatively to the two other countries above named; for chivalry was always in high repute among us, nor did any nation produce more admirable specimens of its excellences.

I am not minutely acquainted with the state of chivalry in Spain, where it seems to have flourished considerably. Italy, except in Naples, and perhaps Piedmont, displayed little of its spirit; which neither suited the free republics of the twelfth and thirteenth nor the jealous tyrannies of the following centuries. Yet even here we find enough to furnish Muratori with materials for his 53d Dissertation.

[316] The well-known "Memoirs" of St. Palaye are the best repository of interesting and illustrative facts respecting chivalry. Possibly he may have relied a little too much on romances, whose pictures will naturally be overcharged. Froissart himself has somewhat of this partial tendency, and the manners of chivalrous times do not make so fair an appearance in Monstrelet. In the Memoirs of La Tremouille ("Collect. des Mém.," tome xiv, p. 169), we have perhaps the earliest delineation from the life of those severe and stately virtues in high-born ladies, of which our own country furnished so many examples in the sixteenth and seventeenth centuries, and which were derived from the influence of chivalrous principles. And those of Bayard in the same collection (tomes xiv and xv) are a beautiful exhibition of the best effects of that discipline.

It appears to me that M. Guizot, to whose judgment I owe all deference, has dwelt rather too much on the feudal character of chivalry. ("Hist. de la Civilisation en France," leçon 36.) Hence he treats the institution as in its decline during the fourteenth century, when, if we can trust either Froissart or the romancers, it was at its height. Certainly, if mere knighthood was of right both in England and the north of France, a territorial dignity, which bore with it no actual presumption of merit, it was sometimes also conferred on a more honourable principle. It was not every knight who possessed a fief, nor in practice did every possessor of a fief receive knighthood.

Guizot justly remarks, as Sismondi has done, the disparity between the lives of most knights and the theory of chivalrous rectitude. But the same has been seen in religion, and can be no reproach to either principle. Partout la pensée

It is now time to pass to a very different subject. The third head under which I classed the improvements of society during the last four centuries of the middle ages was that of literature. But I must apprise the reader not to expect any general view of literary history, even in the most abbreviated manner. Such an epitome would not only be necessarily superficial, but foreign in many of its details to the purposes of this chapter, which, attempting to develop the circumstances that gave a new complexion to society, considers literature only so far as it exercised a general and powerful influence. The private researches, therefore, of a single scholar, unproductive of any material effect in his generation, ought not to arrest us, nor, indeed, would a series of biographical notices, into which literary history is apt to fall, be very instructive to a philosophical inquirer. But I have still a more decisive reason against taking a large range of literary history into the compass of this work, founded on the many contributions which have been made within the last forty years in that department, some of them even since the commencement of my own labour.[817] These have diffused so general an acquaintance with the literature of the middle ages that I must, in treating the subject, either compile secondary information from well-known books, or enter upon a vast field of reading, with little hope of improving upon what has been already said,

morale des hommes s'élève et aspire fort au dessus de leur vie. Et gardez vous de croire que parce qu'elle ne gouvernait pas immédiatement les actions, parceque la pratique démontait sans cesse et étrangement la théorie, l'influence de la théorie fut nulle et sans valeur. C'est beaucoup que le jugement des hommes sur les actions humaines; tot ou tard il devient efficace.

It may be thought by many severe judges that I have overvalued the efficacy of chivalrous sentiments in elevating the moral character of the middle ages. But I do not see ground for withdrawing or modifying any sentence. The comparison is never to be made with an ideal standard, or even with one which a purer religion and a more liberal organization of society may have rendered effectual, but with the condition of a country where neither the sentiments of honour nor those of right prevail. And it seems to me that I have not veiled the deficiency and the vices of chivalry any more than its beneficial tendencies.

A very fascinating picture of chivalrous manners has been drawn by a writer of considerable reading, and still more considerable ability, Mr. Kenelm Digby, in his "Broad Stone of Honour." The bravery, the courteousness, the munificence, above all, the deeply religious character of knighthood and its reverence for the Church, naturally took hold of a heart so susceptible of these emotions, and a fancy so quick to embody them. St. Palaye himself is a less enthusiastic eulogist of chivalry, because he has seen it more on the side of mere romance, and been less penetrated with the conviction of its moral excellence. But the progress of still deeper impression seems to have moderated the ardour of Mr. Digby's admiration for the historical character of knighthood; he has discovered enough of human alloy to render unqualified praise hardly fitting, in his judgment, for a Christian writer; and in the "Mores Catholici," the second work of this amiable and gifted man, the colours in which chivalry appears are by no means so brilliant. [1848.]

[817] Four very recent publications (not to mention that of Burke on modern philosophy) enter much at large into the middle literature: those of M. Ginguené and M. Sismondi, the "History of England," by Mr. Sharon Turner, and the "Literary History of the Middle Ages," by Mr. Berington. All of these contain more or less useful information and judicious remarks; but that of Ginguené is among the most learned and important works of this century. I have no hesitation to prefer it, as far as its subjects extend, to Tiraboschi.

[A subsequent work of my own, "Introduction to the History of Literature in the Fifteenth, Sixteenth, and Seventeenth Centuries," contains, in the first and second chapters, some additional illustrations of the antecedent period, to which the reader may be referred, as complementary to these pages. 1848.]

or even acquiring credit for original research. I shall, therefore, confine myself to four points: the study of civil law; the institution of universities; the application of modern languages to literature, and especially to poetry; and the revival of ancient learning.

The Roman law had been nominally preserved ever since the destruction of the empire, and a great portion of the inhabitants of France and Spain, as well as Italy, were governed by its provisions. But this was a mere compilation from the Theodosian code, which itself contained only the more recent laws promulgated after the establishment of Christianity, with some fragments from earlier collections. It was made by order of Alaric, King of the Visigoths about the year 500, and it is frequently confounded with the Theodosian code by writers of the dark ages.[318] The code of Justinian, reduced into system after the separation of the two former countries from the Greek Empire, never obtained any authority in them, nor was it received in the part of Italy subject to the Lombards. But that this body of laws was absolutely unknown in the West during any period seems to have been too hastily supposed. Some of the more eminent ecclesiastics, as Hincmar and Ivon of Chartres, occasionally refer to it, and bear witness to the regard which the Roman Church had uniformly paid to its decisions.[319]

The revival of the study of jurisprudence, as derived from the laws of Justinian, has generally been ascribed to the discovery made of a copy of the "Pandects" at Amalfi, in 1135, when that city was taken by the Pisans. This fact, though not improbable, seems not to rest upon sufficient evidence.[320] But its truth is the less material, as it appears to be unequivocally proved that the study of Justinian's system had recommenced before that era. Early in the twelfth century a professor named Irnerius [321] opened a school of civil law at Bologna, where he commented, if not on the "Pandects," yet on the other books, the "Institutes" and "Code," which were sufficient to teach the principles and inspire the love of that comprehensive jurisprudence. The study of law, having thus revived, made a surprising progress; within fifty years Lombardy was full of lawyers, on whom Frederick Barbarossa and Alexander III, so hostile in every other respect, conspired to shower honours and privileges. The schools of Bologna were pre-eminent throughout this century

[318] Heineccius, "Hist. Juris. German.," c. 1, s. 15.

[319] Giannone, l. iv, c. 6. Selden, ad Fletam, p. 1071.

[320] Tiraboschi, tome iii, p. 359. Ginguené, "Hist. Litt. de l'Italie," tome i, p. 155.

[321] Irnerius is sometimes called Guarnerius, sometimes Warnerius: the German W is changed into Gu by the Italians, and occasionally omitted, especially in Latinizing, for the sake of euphony or purity.

for legal learning. There seem also to have been seminaries at Modena and Mantua; nor was any considerable city without distinguished civilians. In the next age they became still more numerous, and their professors more conspicuous, and universities arose at Naples, Padua, and other places, where the Roman law was the object of peculiar regard.[322]

There is apparently great justice in the opinion of Tiraboschi, that by acquiring internal freedom and the right of determining controversies by magistrates of their own election the Italian cities were led to require a more extensive and accurate code of written laws than they had hitherto possessed. These municipal judges were chosen from among the citizens, and the succession to offices was usually so rapid that almost every freeman might expect in his turn to partake in the public government, and consequently in the administration of justice. The latter had always, indeed, been exercised in the sight of the people by the count and his assessors under the Lombard and Carlovingian sovereigns; but the laws were rude, the proceedings tumultuary, and the decisions perverted by violence. The spirit of liberty begot a stronger sense of right; and right, it was soon perceived, could only be secured by a common standard. Magistrates holding temporary offices, and little elevated in those simple times above the citizens among whom they were to return, could only satisfy the suitors, and those who surrounded their tribunal, by proving the conformity of their sentences to acknowledged authorities. And the practice of alleging reasons in giving judgment would of itself introduce some uniformity of decision and some adherence to great rules of justice in the most arbitrary tribunals; while, on the other hand, those of a free country lose part of their title to respect, and of their tendency to maintain right, whenever, either in civil or criminal questions, the mere sentence of a judge is pronounced without explanation of its motives.

The fame of this renovated jurisprudence spread very rapidly from Italy over other parts of Europe. Students flocked from all parts of Bologna, and some eminent masters of that school repeated its lessons in distant countries. One of these, Placentinus, explained the "Digest" at Montpellier before the end of the twelfth century, and the collection of Justinian soon came to supersede the Theodosian code in the dominions of Toulouse.[323] Its study continued to flourish in the universities of both these cities; and hence the Roman law, as it is exhibited in the system of Justinian, became the rule of all tribunals in the southern provinces of France. Its authority in Spain is equally

[322] Tiraboschi, tome iv, p. 38; tome v, p. 55.

[323] Tiraboschi, tome v. Vaissette, "Hist. de Languedoc," tome ii, p. 517; tome iii, p. 527; tome iv, p. 504.

great, or at least is only disputed by that of the canonists;[324] and it forms the acknowledged basis of decision in all the Germanic tribunals, sparingly modified by the ancient feudal customaries, which the jurists of the empire reduce within narrow bounds.[325] In the northern parts of France, where the legal standard was sought in local customs, the civil law met naturally with less regard. But the code of St. Louis borrows from that treasury many of its provisions, and it was constantly cited in pleadings before the Parliament of Paris, either as obligatory by way of authority or at least as written wisdom, to which great deference was shown.[326] Yet its study was long prohibited in the University of Paris, from a disposition of the popes to establish exclusively their decretals, though the prohibition was silently disregarded.[327]

As early as the reign of Stephen, Vacarius, a lawyer of Bologna, taught at Oxford with great success; but the students of scholastic theology opposed themselves, from some unexplained reason, to this new jurisprudence, and his lectures were interdicted.[328] About the time of Henry III and Edward I the civil law acquired some credit in England; but a system entirely incompatible with it had established itself in our courts of justice, and the Roman jurisprudence was not only soon rejected, but became obnoxious.[329] Everywhere, however, the clergy combined its study with that of their own canons; it was a maxim that every canonist must be a civilian, and that no one could be a good civilian unless he were also a canonist. In all universities degrees are granted in both laws conjointly; and in all courts of ecclesiastical jurisdiction, the authority of Justinian is cited when that of Gregory or Clement is wanting.[330]

I should earn little gratitude for my obscure diligence were I to dwell on the forgotten teachers of a science that attracts so few. These elder professors of Roman jurisprudence are in-

[324] Duck, "De Usu Juris Civilis," l. ii, c. 6.

[325] Idem, l. ii, 2.

[326] Idem., l. ii, c. 5, s. 30, 31. Fleury, "Hist. du Droit François," p. 74 (prefixed to Argou, "Institutions au Droit François," edit. 1787), says that it was a great question among lawyers, and still undecided (i. e., in 1674) whether the Roman law was the common law in the pays coutumiers, as to those points wherein their local customs were silent. And, if I understand Denisart ("Dictionnaire des Décisions," art. Droit-écrit), the affirmative prevailed. It is plain at least by the "Causes Célèbres" that appeal was continually made to the principles of the civil law in the argument of Parisian advocates.

[327] Crevier, "Histoire de l'Université de Paris," tome i, page 316; tome ii, page 275.

[328] Johan. Salisburiensis, apud Selden ad Fletam, p. 1082.

[329] Selden, ubi supra, pp. 1095–1104. This passage is worthy of attention. Yet, notwithstanding Selden's authority, I am not satisfied that he has not extenuated the effect of Bracton's predilection for the maxims of Roman jurisprudence. No early lawyer has contributed so much to form our own system as Bracton; and if his definitions and rules are sometimes borrowed from the civilians, as all admit, our common law may have indirectly received greater modification from that influence than its professors were ready to acknowledge, or even than they knew. A full view of this subject is still, I think, a desideratum in the history of English law, which it would illustrate in a very interesting manner.

[330] Duck, "De Usu Juris Civilis," l. i, c. 87.

fected, as we are told, with the faults and ignorance of their time, failing in the exposition of ancient law through incorrectness of manuscripts and want of subsidiary learning, or perverting their sense through the verbal subtleties of scholastic philosophy. It appears that, even a hundred years since, neither Azzo and Accursius, the principal civilians of the thirteenth century, nor Bartolus and Baldus, the more conspicuous luminaries of the next age, nor the later writings of Accolti, Fulgosius, and Panormitanus, were greatly regarded as authorities; unless it were in Spain, where improvement is always odious, and the name of Bartolus inspired absolute deference.[881] In the sixteenth century, Alciatus and the greater Cujacius became, as it were, the founders of a new and more enlightened academy of civil law, from which the latter jurists derived their lessons. The laws of Justinian, stripped of their impurer alloy, and of the tedious glosses of their commentators, will form the basis of other systems, and mingling, as we may hope, with the new institutions of philosophical legislators, continue to influence the social relations of mankind, long after their direct authority shall have been abrogated. The ruins of ancient Rome supplied the materials of a new city; and the fragments of her law, which have already been wrought into the recent codes of France and Prussia, will probably, under other names, guide far-distant generations by the sagacity of Modestinus and Ulpian.[882]

The establishment of public schools in France is owing to Charlemagne. At his accession we are assured that no means of obtaining a learned education existed in his dominions,[883] and, in order to restore in some degree the spirit of letters, he was compelled to invite strangers from countries where learning was not so thoroughly extinguished. Alcuin of England, Clement of Ireland, Theodulf of Germany, were the true Paladins who repaired to his court. With the help of these he revived a few sparks of diligence, and established schools in different

[881] Gravina, "Origines Juris Civilis," p. 106.

[882] Those who feel some curiosity about the civilians of the middle ages will find a concise and elegant account in Gravina, "De Origine Juris Civilis," pp. 166–206. (Lips., 1708.) Tiraboschi contains perhaps more information; but his prolixity is very wearisome. Besides this fault, it is evident that Tiraboschi knew very little of law, and had not read the civilians of whom he treats; whereas Gravina discusses their merits not only with legal knowledge, but with an acuteness of criticism which, to say the truth, Tiraboschi never shows except on a date or a name.

[The civil lawyers of the mediæval period are not at all forgotten on the continent, as the great work of Savigny, "History of Roman Law in the Middle Ages," sufficiently proves. It is certain that the civil law must always be studied in Europe, nor ought the new codes to supersede it, seeing they are in great measure derived from its fountain; though I have heard that it is less regarded in France than formerly. In my earlier editions I depreciated the study of the civil law too much, and with too exclusive an attention to English notions.]

[883] Ante ipsum dominum Carolum regem in Gallia nullum fuit studium liberalium artium. (Monachus Engolismensis, apud Launoy, De Scholis per occidentem instauratis, p. 5; see too "Histoire Littéraire de la France," tome iv, p. 1.) "Studia liberalium artium" in this passage must be understood to exclude literature, commonly so called, but not a certain measure of very ordinary instruction; for there were episcopal and con-

cities of his empire; nor was he ashamed to be the disciple of that in his own palace under the care of Alcuin.[334] His next two successors, Louis the Debonair and Charles the Bald, were also encouragers of letters; and the schools of Lyons, Fulda, Corvey, Rheims, and some other cities might be said to flourish in the ninth century.[335] In these were taught the trivium and quadrivium, a long-established division of sciences: the first comprehending grammar, or what we now call philology, logic, and rhetoric; the second, music, arithmetic, geometry, and astronomy.[336] But in those ages scarcely anybody mastered the latter four, and to be perfect in the three former was exceedingly rare. All those studies, however, were referred to theology, and that in the narrowest manner; music, for example, being reduced to church chanting, and astronomy to the calculation of Easter.[337] Alcuin was, in his old age, against reading the poets;[338] and this discouragement of secular learning was very general; though some, as, for instance, Raban, permitted a slight tincture of it as subsidiary to religious instruction.[339]

About the latter part of the eleventh century a greater ardour for intellectual pursuits began to show itself in Europe, which in the twelfth broke out into a flame. This was manifested in the numbers who repaired to the public academies or schools of philosophy. None of these grew so early into reputation as that of Paris. This can not, indeed, as has been vainly pretended, trace its pedigree to Charlemagne. The first who is said to have read lectures at Paris was Remigius of Auxerre, about the year 900.[340] For the next two centuries the history of this school is very obscure; and it would be hard to prove an unbroken continuity, or at least a dependence and connection of its professors. In the year 1100 we find William of Champeaux teaching logic, and apparently some higher parts of philosophy, with much credit. But this preceptor was eclipsed by his disciple, afterward his rival and adversary, Peter Abélard, to whose brilliant and hardy genius the University of Paris appears to

ventual schools in the seventh and eighth centuries, even in France, especially Aquitaine; we need hardly repeat that in England the former of these ages produced Bede and Theodore, and the men trained under them; the "Lives of the Saints" also lead us to take with some limitation the absolute denial of liberal studies before Charlemagne. (See Guizot, "Hist. de la Civilis. en France," leçon 16; and Ampère, "Hist. Litt. de la France," iii, p. 4.) But, perhaps, philology, logic, philosophy, and even theology were not taught as sciences in any of the French schools of these two centuries; and consequently those established by Charlemagne justly make an epoch.

[334] Id., ibid. There was a sort of literary club among them, where the members assumed ancient names. Charlemagne was called David; Alcuin, Horace; another, Dametas, etc.

[335] "Hist. Littéraire," p. 217, etc.

[336] This division of the sciences is ascribed to St. Augustine; and we certainly find it established early in the sixth century. (Brucker, "Historia Critica Philosophiæ," tome iii, p. 597.)

[337] Schmidt, "Hist des Allemands," tome ii, p. 126.

[338] Crevier, "Hist. de l'Université de Paris," tome i, p. 28.

[339] Brucker, tome iii, p. 612. Raban Maurus was chief of the cathedral school at Fulda in the ninth century.

[340] Crevier, p. 66.

be indebted for its rapid advancement. Abélard was almost the first who awakened mankind in the ages of darkness to a sympathy with intellectual excellence. His bold theories, not the less attractive perhaps for treading upon the bounds of heresy, his imprudent vanity, that scorned the regularly acquired reputation of older men, allured a multitude of disciples, who would never have listened to an ordinary teacher. It is said that twenty cardinals and fifty bishops had been among his hearers.[841] Even in the wilderness, where he had erected the monastery of Paraclete, he was surrounded by enthusiastic admirers, relinquishing the luxuries, if so they might be called, of Paris, for the coarse living and imperfect accommodation which that retirement could afford.[842] But the whole of Abélard's life was the shipwreck of genius; and of genius, both the source of his own calamities and unserviceable to posterity. There are few lives of literary men more interesting or more diversified by success and adversity, by glory and humiliation, by the admiration of mankind and the persecution of enemies; nor from which, I may add, more impressive lessons of moral prudence may be derived.[843] One of Abélard's pupils was Peter Lombard, afterward Archbishop of Paris, and author of a work called the "Book of Sentences," which obtained the highest authority among the scholastic disputants. The resort of students to Paris became continually greater; they appear, before the year 1169, to have been divided into nations;[844] and probably they had an elected rector and voluntary rules of discipline about the same time. This, however, is not decisively proved, but in the last year of the twelfth century they obtained their earliest charter from Philip Augustus.[845]

The opinion which ascribes the foundation of the University of Oxford to Alfred, if it can not be maintained as a truth, contains no intrinsic marks of error. Ingulfus, Abbot of Croyland, in the earliest authentic passage that can be adduced to this point,[846] declares that he was sent from Westminster to the school

[841] Crevier, p. 171; Brucker, p. 677; Tiraboschi, tome iii, p. 275.

[842] Brucker, p. 750.

[843] A great interest has been revived in France for the philosophy, as well as the personal history, of Abélard, by the publication of his philosophical writings, in 1836, under so eminent an editor as M. Cousin, and by the excellent work of M. de Rémusat, in 1845, with the title Abélard, containing a copious account both of the life and writings of that most remarkable man, the father, perhaps, of the theory as to the nature of universal ideas, now so generally known by the name of conceptualism.

[844] The faculty of arts in the University of Paris was divided into four nations: those of France, Picardy, Normandy, and England. These had distinct suffrages in the affairs of the university, and consequently, when united, outnumbered the three higher faculties of theology, law, and medicine. In 1169, Henry II of England offers to refer his dispute with Becket to the provinces of the school of Paris.

[845] Crevier, tome i, p. 279. The first statute regulating the discipline of the university was given by Robert de Courçon, legate of Honorius III, in 1215, id., p. 296.

[846] No one probably would choose to rely on a passage found in one manuscript of Asserius, which has all the appearance of an interpolation. It is evident from an anecdote in Wood's "History of Oxford," vol. i, p. 23 (Gutch's edi-

at Oxford, where he learned Aristotle, with the first and second books of Tully's "Rhetoric."[347] Since a school for dialectics and rhetoric subsisted at Oxford, a town of but middling size and not the seat of a bishop, we are naturally led to refer its foundation to one of our kings, and none who had reigned after Alfred appears likely to have manifested such zeal for learning. However, it is evident that the school of Oxford was frequented under Edward the Confessor. There follows an interval of above a century, during which we have, I believe, no contemporary evidence of its continuance. But in the reign of Stephen, Vacarius read lectures there upon civil law; and it is reasonable to suppose that a foreigner would not have chosen that city if he had not found a seminary of learning already established. It was probably inconsiderable, and might have been interrupted during some part of the preceding century.[348] In the reign of Henry II, or at least of Richard I, Oxford became a very flourishing university, and in 1201, according to Wood, contained three thousand scholars.[349] The earliest charters were granted by John.

If it were necessary to construe the word university in the strict sense of a legal incorporation, Bologna might lay claim to a higher antiquity than either Paris or Oxford. There are a few vestiges of studies pursued in that city even in the eleventh century;[350] but early in the next the revival of the Roman jurisprudence, as has been already noticed, brought a throng of scholars round the chairs of its professors. Frederick Barbarossa in 1158, by his authentic, or rescript, entitled "Habita," took these under his protection, and permitted them to be tried in civil suits by their own judges. This exemption from the

tion), that Camden did not believe in the authenticity of this passage, though he thought proper to insert it in the Britannia.

[347] 1 Gale, p. 75. The mention of Aristotle at so early a period might seem to throw some suspicion on this passage. But it is impossible to detach it from the context; and the works of Aristotle intended by Ingulfus were translations of parts of his "Logic" by Boethius and Victorin. (Brucker, p. 678.) A passage, indeed, in Peter of Blois's continuation of Ingulfus, where the study of Averroes is said to have taken place at Cambridge some years before he was born, is of a different complexion, and must of course be rejected as spurious. In the "Gesta Comitum Andegavensium," Fulk, Count of Anjou, who lived about 920, is said to have been skilled Aristotelicis et Ciceronianis ratiocinationibus.

[The authenticity of Ingulfus has been called in question, not only by Sir Francis Palgrave, but by Mr. Wright. ("Biogr. Liter., Anglo-Norman Period," p. 29.) And this implies, apparently, the spuriousness of the continuation ascribed to Peter of Blois, in which the passage about Averroes throws doubt upon the whole. I have, in the introduction to the "History of Literature," retracted the degree of credence here given to the foundation of the University of Oxford by Alfred. If Ingulfus is not genuine, we have no proof of its existence as a school of learning before the middle of the twelfth century.]

[348] It may be remarked, that John of Salisbury, who wrote in the first years of Henry II's reign, since his Polycraticon is dedicated to Becket, before he became archbishop, makes no mention of Oxford, which he would probably have done if it had been an eminent seat of learning at that time.

[349] Wood's "Hist. and Antiquities of Oxford," p. 177. The Benedictines of St. Maur say that there was an eminent school of canon law at Oxford about the end of the twelfth century, to which many students repaired from Paris. ("Hist. Litt. de la France," tome ix, p. 216.

[350] Tiraboschi, tome iii, p. 259, et alibi; Muratori, "Dissert." 43.

ordinary tribunals, and even from those of the Church, was naturally coveted by other academies; it was granted to the University of Paris by its earliest charter from Philip Augustus, and to Oxford by John. From this time the golden age of universities commenced; and it is hard to say whether they were favoured more by their sovereigns or by the See of Rome. Their history, indeed, is full of struggles with the municipal authorities, and with the bishops of their several cities, wherein they were sometimes the aggressors, and generally the conquerors. From all parts of Europe students resorted to these renowned seats of learning with an eagerness for instruction which may astonish those who reflect how little of what we now deem useful could be imparted. At Oxford, under Henry III, it is said that there were thirty thousand scholars—an exaggeration which seems to imply that the real number was very great.[851] A respectable contemporary writer asserts that there were full ten thousand at Bologna about the same time.[852] I have not observed any numerical statement as to Paris during this age, but there can be no doubt that it was more frequented than any other. At the death of Charles VII, in 1453, it is said to have contained twenty-five thousand students.[853] In the thirteenth century other universities sprang up in different countries: Padua and Naples under the patronage of Frederick II, a zealous and useful friend to letters,[854] Toulouse and Montpellier, Cambridge and Salamanca.[855] Orleans, which had long been distinguished as a school of civil law, received the privileges of incorporation early in the fourteenth century, and Angers before the expiration of the same age.[856] Prague, the earliest and most eminent of German universities, was founded in 1350; a secession from thence of Saxon students, in consequence of the na-

[851] "But among these," says Anthony Wood, "a company of varlets, who pretended to be scholars, shuffled themselves in, and did act much villainy in the university by thieving, whoring, quarrelling, etc. They lived under no discipline, neither had they tutors; but only for fashion's sake would sometimes thrust themselves into the schools at ordinary lectures, and when they went to perform any mischief, then would they be accounted scholars, that so they might free themselves from the jurisdiction of the burghers" (p. 206). If we allow three varlets to one scholar, the university will still have been very fully frequented by the latter.

[852] Tiraboschi, tome iv, p. 47. Azarius, about the middle of the fourteenth century, says the number was about 13,000 in his time. (Muratori, "Script. Rer. Ital.," tome xvi, p. 325.)

[853] Villaret, "Hist. de France," tome xvi, p. 341. This may perhaps require to be taken with allowance. But Paris owes a great part of its buildings on the southern bank of the Seine to the university. The students are said to have been about 12,000 before 1480. (Crevier, tome iv, p. 410.)

[854] Tiraboschi, tome iv, pp. 43 and 46.

[855] The earliest authentic mention of Cambridge as a place of learning, if I mistake not, is in Matthew Paris, who informs us that in 1209, John having caused three clerks of Oxford to be hanged on suspicion of murder, the whole body of scholars left that city, and emigrated, some to Cambridge, some to Reading, in order to carry on their studies (p. 191, edit. 1684). But it may be conjectured with some probability that they were led to a town so distant as Cambridge by the previous establishment of academical instruction in that place. The incorporation of Cambridge is in 1231 (15 Henry III), so that there is no great difference in the legal antiquity of our two universities.

[856] Crevier, "Hist. de l'Université de Paris," tome ii, p. 216; tome iii, p. 140.

tionality of the Bohemians and the Hussite schism, gave rise to that of Leipsic.[857] The fifteenth century produced several new academical foundations in France and Spain.

A large proportion of scholars in most of those institutions were drawn by the love of science from foreign countries. The chief universities had their own particular departments of excellence. Paris was unrivalled for scholastic theology; Bologna and Orleans, and afterward Bourges, for jurisprudence; Montpellier for medicine. Though national prejudices, as in the case of Prague, sometimes interfered with this free resort of foreigners to places of education, it was in general a wise policy of government, as well as of the universities themselves, to encourage it. The thirty-fifth article of the Peace of Bretigni provides for the restoration of former privileges to students respectively in the French and English universities.[858] Various letters-patent will be found in Rymer's collection, securing to Scottish as well as French natives a safe passage to their place of education. The English nation, including, however, the Flemings and Germans,[859] had a separate vote in the faculty of arts at Paris. But foreign students were not, I believe, so numerous in the English academies.

If endowments and privileges are the means of quickening a zeal for letters, they were liberally bestowed in the last three of the middle ages. Crevier enumerates fifteen colleges founded in the University of Paris during the thirteenth century, besides one or two of a still earlier date. Two only, or at most three, existed in that age at Oxford, and but one at Cambridge. In the next two centuries these universities could boast, as every one knows, of many splendid foundations, though much exceeded in number by those of Paris. Considered as ecclesiastical institutions, it is not surprising that the universities obtained, according to the spirit of their age, an exclusive cognizance of civil or criminal suits affecting their members. This jurisdiction was, however, local as well as personal, and in reality encroached on the regular police of their cities. At Paris the privilege turned to a flagrant abuse, and gave rise to many scandalous contentions.[860] Still more valuable advantages were those relating to ecclesiastical preferments, of which a large proportion was reserved in France to academical graduates. Something of the same sort, though less extensive, may still be traced in the rules respecting plurality of benefices in our English Church.

This remarkable and almost sudden transition from a total indifference to all intellectual pursuits can not be ascribed per-

[857] Pfeffel, "Abrégé Chronologique de l'Hist. de l'Allemagne," pp. 550, 607.
[858] Rymer, tome vi, p. 292.
[859] Crevier, tome ii, p. 398.
[860] Crevier and Villaret, passim.

haps to any general causes. The restoration of the civil, and the formation of the canon law, were indeed eminently conducive to it, and a large proportion of scholars in most universities confined themselves to jurisprudence. But the chief attraction to the studious was the new scholastic philosophy. The love of contention, especially with such arms as the art of dialectics supplies to an acute understanding, is natural enough to mankind. That of speculating upon the mysterious questions of metaphysics and theology is not less so. These disputes and speculations, however, appear to have excited little interest till, after the middle of the eleventh century, Roscelin, a professor of logic, revived the old question of the Grecian schools respecting universal ideas, the reality of which he denied. This kindled a spirit of metaphysical discussion, which Lanfranc and Anselm, successively Archbishops of Canterbury, kept alive; and in the next century Abélard and Peter Lombard, especially the latter, completed the scholastic system of philosophizing. The logic of Aristotle seems to have been partly known in the eleventh century, although that of Augustine was perhaps in higher estimation;[861] in the twelfth it obtained more decisive influence. His metaphysics, to which the logic might be considered as preparatory, were introduced through translations from the Arabic, and perhaps also from the Greek, early in the ensuing century.[862] This work, condemned at first by the decrees of popes and councils on account of its supposed tendency to atheism, acquired by degrees an influence, to which even popes and councils were obliged to yield. The Mendicant Friars, established throughout Europe in the thirteenth century, greatly contributed to promote the Aristotelian philosophy; and its final reception into the orthodox system of the Church may chiefly be ascribed to Thomas Aquinas, the boast of the Dominican order, and certainly the most distinguished metaphysician of the middle ages. His authority silenced all scruples as to that of Aristotle, and

[861] Brucker, "Hist. Crit. Philosophiæ," tome iii, p. 678.

[862] Id., ibid. Tiraboschi conceives that the translations of Aristotle made by command of Frederick II were directly from the Greek, tome iv, p. 145; and censures Brucker for the contrary opinion. Buhle, however ("Hist. de la Philosophie Moderne," tome i, p. 696), appears to agree with Brucker. It is almost certain that versions were made from the Arabic Aristotle, which itself was not immediately taken from the Greek, but from a Syriac medium. (Ginguené, "Hist. Litt. de l'Italie," tome i, p. 212, on the authority of M. Langlés).

It was not only a knowledge of Aristotle that the scholastics of Europe derived from the Arabic language. His writings had produced in the flourishing Mohammedan kingdoms a vast number of commentators, and of metaphysicians trained in the same school. Of these Averroes, a native of Cordova, who died early in the thirteenth century, was the most eminent. It would be curious to examine more minutely than has hitherto been done the original writings of these famous men, which no doubt have suffered in translation. A passage from Al Gazel, which Mr. Turner has rendered from the Latin, with all the disadvantage of a double remove from the author's words, appears to state the argument in favour of that class of Nominalists, called Conceptualists, with more clearness and precision than anything I have seen from the schoolmen. Al Gazel died in 1126, and consequently might have suggested this theory to Abélard, which, however, is not probable. (Turner's "Hist. of Engl.," vol. i, p. 513.)

the two philosophers were treated with equally implicit deference by the later schoolmen.[863]

This scholastic philosophy, so famous for several ages, has since passed away and been forgotten. The history of literature, like that of empire, is full of revolutions. Our public libraries are cemeteries of departed reputations, and the dust accumulating upon their untouched volumes speaks as forcibly as the grass that waves over the ruins of Babylon. Few, very few, for a hundred years past have broken the repose of the immense works of the schoolmen. None perhaps in our own country have acquainted themselves particularly with their contents. Leibnitz, however, expressed a wish that some one conversant with modern philosophy would undertake to extract the scattered particles of gold which may be hidden in their abandoned mines. This wish has been at length partially fulfilled by three or four of those industrious students and keen metaphysicians, who do honour to modern Germany. But most of their works are unknown to me except by repute, and as they all appear to be formed on a very extensive plan, I doubt whether even those laborious men could afford adequate time for this ungrateful research. Yet we can not pretend to deny that Roscelin, Anselm, Abélard, Peter Lombard, Albertus Magnus, Thomas Aquinas, Duns Scotus, and Ockham were men of acute and even profound understandings, the giants of their own generation. Even with the slight knowledge we possess of their tenets, there appear through the cloud of repulsive technical barbarisms rays of metaphysical genius which this age ought not to despise. Thus in the works of Anselm is found the celebrated argument of Descartes for the existence of a Deity, deduced from the idea of an infinitely perfect being. One great object that most of the schoolmen had in view was to establish the principles of natural theology by abstract reasoning. This reasoning was doubtless liable to great difficulties. But a modern writer, who seems tolerably acquainted with the subject, assures us that it would be difficult to mention any theoretical argument to prove the divine attributes, or any objection capable of being raised against the proof, which we do not find in some of the scholastic philosophers.[864] The most celebrated subjects of discussion, and those on which this class of reasoners were most divided, were

[863] Brucker, "Hist. Crit. Philosophiæ," tome iii. I have found no better guide than Brucker. But he confesses himself not to have read the original writings of the scholastics; an admission which every reader will perceive to be quite necessary. Consequently, he gives us rather a verbose declamation against their philosophy than any clear view of its character. Of the valuable works lately published in Germany on the history of philosophy, I have only seen that of Buhle, which did not fall into my hands till I had nearly written these pages. Tiedemann and Tennemann are, I believe, still untranslated.

[864] Buhle, "Hist. de la Philos. Moderne," tome i, p. 723. This author raises upon the whole a favourable notion of Anselm and Aquinas; but he hardly notices any other.

the reality of universal ideas, considered as extrinsic to the human mind and the freedom of will. These have not ceased to occupy the thoughts of metaphysicians.[365]

But all discovery of truth by means of these controversies was rendered hopeless by two insurmountable obstacles—the authority of Aristotle and that of the Church. Wherever obsequious reverence is substituted for bold inquiry, Truth, if she is not already at hand, will never be attained. The scholastics did not understand Aristotle, whose original writings they could not read,[366] but his name was received with implicit faith. They learned his peculiar nomenclature, and fancied that he had given them realities. The authority of the Church did them still more harm. It has been said, and probably with much truth, that their metaphysics were injurious to their theology. But I must observe in return that their theology was equally injurious to their metaphysics. Their disputes continually turned upon questions either involving absurdity and contradiction, or at best inscrutable by human comprehension. Those who assert the greatest antiquity of the Roman Catholic doctrine as to the real presence allow that both the word and the definition of transubstantiation are owing to the scholastic writers. Their subtleties were not always so well received. They reasoned at imminent peril of being charged with heresy, which Roscelin, Abélard, Lombard, and Ockham did not escape. In the virulent factions that arose out of their metaphysical quarrels, either

[365] Mr. Turner has with his characteristic spirit of enterprise examined some of the writings of our chief English schoolmen, Duns Scotus and Ockham ("Hist. of Eng.," vol. i), and even given us some extracts from them. They seem to me very frivolous, so far as I can collect their meaning. Ockham in particular falls very short of what I had expected; and his nominalism is strangely different from that of Berkeley. We can hardly reckon a man in the right, who is so by accident, and through sophistical reasoning. However, a well-known article in the "Edinburgh Review," No. liii, p. 204, gives, from Tennemann, a more favourable account of Ockham.

Perhaps I may have imagined the scholastics to be more forgotten than they really are. Within a short time I have met with four living English writers who have read parts of Thomas Aquinas: Mr. Turner, Mr. Berington, Mr. Coleridge, and the Edinburgh Reviewer. Still I can not bring myself to think that there are four more in this country who can say the same. Certain portions, however, of his writings are still read in the course of instruction of some Catholic universities.

[I leave this passage as it was written about 1814. But it must be owned with regard to the schoolmen, as well as the jurists, that I at that time underrated, or at least did not anticipate, the attention which their works have attracted in modern Europe, and that the passage in the text is more applicable to the philosophy of the eighteenth century than of the present. For several years past the metaphysicians of Germany and France have brushed the dust from the scholastic volumes; Tennemann and Buhle, Degerando, but more than all Cousin and Rémusat, in their excellent labours on Abélard, have restored the mediæval philosophy to a place in transcendental metaphysics, which, during the prevalence of the Cartesian school, and those derived from it, had been refused. 1848.]

[366] Roger Bacon, by far the truest philosopher of the middle ages, complains of the ignorance of Aristotle's translators. Every translator, he observes, ought to understand his author's subject, and the two languages from which and into which he is to render the work. But none hitherto, except Boethius, have sufficiently known the languages; nor has one, except Robert Grostete (the famous Bishop of Lincoln), had a competent acquaintance with science. The rest make egregious errors in both respects. And there is so much misapprehension and obscurity in the Aristotelian writings as thus translated that no one understands them. ("Opus Majus," p. 45.)

party was eager to expose its adversary to detraction and persecution. The Nominalists were accused, one hardly sees why, with reducing, like Sabellius, the persons of the Trinity to modal distinctions. The Realists, with more pretence, incurred the imputation of holding a language that savoured of atheism.[367] In the controversy which the Dominicans and Franciscans, disciples respectively of Thomas Aquinas and Duns Scotus, maintained about grace and free will, it was, of course, still more easy to deal in mutual reproaches of heterodoxy. But the schoolmen were in general prudent enough not to defy the censures of the Church; and the popes, in return for the support they gave to all exorbitant pretensions of the Holy See, connived at this factious wrangling, which threatened no serious mischief, as it did not proceed from any independent spirit of research. Yet with all their apparent conformity to the received creed there was, as might be expected from the circumstances, a great deal of real deviation from orthodoxy, and even of infidelity. The scholastic mode of dispute, admitting of no termination and producing no conviction, was the sure cause of scepticism; and the system of Aristotle, especially with the commentaries of Averroes, bore an aspect very unfavourable to natural religion.[368] The Aristotelian philosophy, even in the hands of the Master, was like a barren tree that conceals its want of fruit by profusion of leaves. But the scholastic ontology was much worse. What could be more trifling than disquisitions about the nature of angels, their modes of operation, their means of conversing, or (for these were distinguished) the morning and evening state of their understandings?[369] Into such follies the schoolmen appear to have launched, partly because there was less danger of running against a heresy in a matter where the Church had defined so little—partly from their presumption, which disdained all inquiries into the human mind as merely a part of physics—and in no small degree through a spirit of mystical fanaticism, derived from the Oriental philosophy and the later Platonists, which blended itself with the cold-blooded technicalities of the Aristotelian school.[370]

[367] Brucker, pp. 733, 912. Mr. Turner has fallen into some confusion as to this point, and supposes the nominalist system to have had a pantheistical tendency, not clearly apprehending its characteristics (p. 512).

[368] Petrarch gives a curious account of the irreligion that prevailed among the learned at Venice and Padua, in consequence of their unbounded admiration for Aristotle and Averroes. One of this school, conversing with him, after expressing much contempt for the Apostles and Fathers, exclaimed: "Utinam tu Averroim pati posses, ut videres quanto ille tuis his nugatoribus major sit!" ("Mém. de Pétrarque," tome iii, p 759; Tiraboschi, tome v, p. 162.

[369] Brucker, p. 898.

[370] This mystical philosophy appears to have been introduced into Europe by John Scotus, whom Buhle treats as the founder of the scholastic philosophy; though, as it made no sensible progress for two centuries after his time, it seems more natural to give that credit to Roscelin and Anselm. Scotus, or Erigena, as he is perhaps more frequently called, took up, through the medium of a spurious work, ascribed to Dionysius the Areopagite, that remarkable system, which has from time immemorial prevailed in some schools of the East, wherein all external phenomena, as well as all subordinate intellects, are considered as emanating from the Supreme Being, into whose

But this unproductive waste of the faculties could not last forever. Men discovered that they had given their time for the promise of wisdom, and been cheated in the bargain. What John of Salisbury observes of the Parisian dialecticians in his own time that, after several years' absence, he found them not a step advanced and still employed in urging and parrying the same arguments, was equally applicable to the period of centuries. After three or four hundred years, the scholastics had not untied a single knot, nor added one unequivocal truth to the domain of philosophy. As this became more evident, the enthusiasm for that kind of learning declined; after the middle of the fourteenth century few distinguished teachers arose among the schoolmen, and at the revival of letters their pretended science had no advocates left but among the prejudiced or ignorant adherents of established systems. How different is the state of genuine philosophy, the zeal for which will never wear out by length of time or change of fashion, because the inquirer, unrestrained by authority, is perpetually cheered by the discovery of truth in researches, which the boundless riches of Nature seem to render indefinitely progressive![871]

Yet, upon a general consideration, the attention paid in the universities to scholastic philosophy may be deemed a source of improvement in the intellectual character when we compare it with the perfect ignorance of some preceding ages. Whether the same industry would not have been more profitably directed if the love of metaphysics had not intervened is another question. Philology, or the principles of good taste, degenerated through the prevalence of school logic. The Latin compositions of the twelfth century are better than those of the three that followed—at least on the northern side of the Alps. I do not, however, conceive that any real correctness of taste or general elegance of style was likely to subsist in so imperfect a condition of society. These qualities seem to require a certain harmonious cor-

essence they are hereafter to be absorbed. This system, reproduced under various modifications, and combined with various theories of philosophy and religion, is perhaps the most congenial to the spirit of solitary speculation, and consequently the most extensively diffused of any which those high themes have engendered. It originated, no doubt, in sublime conceptions of divine omnipotence and ubiquity. But clearness of expression, or, indeed, of ideas, being not easily connected with mysticism, the language of philosophers adopting the theory of emanation is often hardly distinguishable from that of the pantheists. Brucker, very unjustly, as I imagine from the passages he quotes, accuses John Erigena of pantheism. ("Hist. Crit. Philos.," p. 620.) The charge would, however, be better grounded against some whose style might deceive an unaccustomed reader. In fact, the philosophy of emanation leads very nearly to the doctrine of a universal substance, which begot the atheistic system of Spinoza, and which appears to have revived with similar consequences among the metaphysicians of Germany. How very closely the language of this Oriental philosophy, or even that which regards the Deity as the soul of the world, may verge upon pantheism, will be perceived (without the trouble of reading the first book of Cudworth) from two famous passages of Virgil and Lucan. (Georg., l. iv, v. 219; and Pharsalia, l. viii, v. 578.)

[871] This subject, as well as some others in this part of the present chapter, has been touched in my "Introduction to the Literature of the Fifteenth, Sixteenth, and Seventeenth Centuries."

respondence in the tone of manners before they can establish a prevalent influence over literature. A more real evil was the diverting of studious men from mathematical science. Early in the twelfth century several persons, chiefly English, had brought into Europe some of the Arabian writings on geometry and physics. In the thirteenth the works of Euclid were commented upon by Campano,[872] and Roger Bacon was fully acquainted with them.[873] Algebra, as far as the Arabians knew it, extending to quadratic equations, was actually in the hands of some Italians at the commencement of the same age, and preserved for almost three hundred years as a secret, though without any conception of its importance. As abstract mathematics require no collateral aid, they may reach the highest perfection in ages of general barbarism; and there seems to be no reason why, if the course of study had been directed that way, there should not have arisen a Newton or a Laplace, instead of an Aquinas or an Ockham. The knowledge displayed by Roger Bacon and by Albertus Magnus, even in the mixed mathematics, under every disadvantage from the imperfection of instruments and the want of recorded experience, is sufficient to inspire us with regret that their contemporaries were more inclined to astonishment than to emulation. These inquiries, indeed, were subject to the ordeal of fire, the great purifier of books and men; for if the metaphysician stood a chance of being burned as a heretic, the natural philosopher was in not less jeopardy as a magician.[874]

A far more substantial cause of intellectual improvement was the development of those new languages that sprang out of the corruption of Latin. For three or four centuries after what was called the Romance tongue was spoken in France, there re-

[872] Tiraboschi, tome iv, p. 150.

[873] There is a very copious and sensible account of Roger Bacon in Wood's "History of Oxford," vol. i, p. 332 (Gutch's edition). I am a little surprised that Antony should have found out Bacon's merit.

The resemblance between Roger Bacon and his greater namesake is very remarkable. Whether Lord Bacon ever read the "Opus Majus" I know not; but it is singular that his favourite quaint expression, prærogativæ scientiarum, should be found in that work, though not used with the same allusion to the Roman comitia. And whoever reads the sixth part of the "Opus Majus," upon experimental science, must be struck by it as the prototype, in spirit, of the "Novum Organum." The same sanguine and sometimes rash confidence in the effect of physical discoveries, the same fondness for experiment, the same preference of inductive to abstract reasoning, pervade both works. Roger Bacon's philosophical spirit may be illustrated by the following passage: Duo sunt modi cognoscendi; scilicet per argumentum et experimentum. Argumentum concludit et facit nos concludere quæstionem; sed non certificat neque removet dubitationem, ut quiescat animus in intuitu veritatis, nisi eam inveniat viâ experientiæ; quia multi habent argumenta ad scibilia, sed quia non habent experientiam, negligunt ea, neque vitant nociva nec persequuntur bona. Si enim aliquis homo, qui nunquam vidit ignem, probavit per argumenta sufficientia quod ignis comburit et lædit res et destruit, nunquam propter hoc quiesceret animus audientis, nec ignem vitaret antequam poneret manum vel rem combustibilem ad ignem, ut per experientiam probaret quod argumentum edocebat; sed assumptâ experientiâ combustionis certificatur animus et quiescit in fulgore veritatis, quo argumentum non sufficit, sed experientia (p. 446).

[874] See the fate of Cecco d' Ascoli in Tiraboschi, tome v, p. 174.

main but few vestiges of its employment in writing; though we can not draw an absolute inference from our want of proof, and a critic of much authority supposes translations to have been made into it for religious purposes from the time of Charlemagne.[875] During this period the language was split into two very separate dialects, the regions of which may be considered, though by no means strictly, as divided by the Loire. These were called the Langue d'Oil and the Langue d'Oc; or in more modern times, the French and Provençal dialects. In the latter of these I know of nothing which can even by name be traced beyond the year 1100. About that time Gregory de Bechada, a gentleman of Limousin, recorded the memorable events of the first crusade, then recent, in a metrical history of great length.[876] This poem has altogether perished; which, considering the popularity of its subject, as M. Sismondi justly remarks, would probably not have been the case if it had possessed any merit. But very soon afterward a multitude of poets, like a swarm of summer insects, appeared in the southern provinces of France. These were the celebrated Troubadours, whose fame depends far less on their positive excellence than on the darkness of preceding ages, on the temporary sensation they excited, and their permanent influence on the state of European poetry. From William, Count of Poitou, the earliest troubadour on record, who died in 1126, to their extinction, about the end of the next century, there were probably several hundred of these versifiers in the language of Provence, though not always natives of France. Millot has published the lives of one hundred and forty-two, besides the names of many more whose history is unknown; and a still greater number, it can not be doubted, are unknown by name. Among those poets are reckoned a King of England (Richard I), two of Aragon, one of Sicily, a dauphin of Auvergne, a Count of Foix, a Prince of Orange, many noblemen, and several ladies. One can hardly pretend to account for this sudden and transitory love of verse: but it is manifestly one symptom of the rapid impulse which the human mind received in the twelfth century, and contemporaneous with the severer studies that began to flourish in the universities. It was encouraged by the prosperity of Languedoc and Provence, undisturbed, comparatively with other countries, by internal warfare, and disposed by the temper of their inhabitants to feel with

[875] Le Bœuf, "Mém. de l'Acad. des Inscrip.," tome xvii, p. 711.

[876] Gregorius, cognomento Bechada, de Castro de Turribus, professione miles, subtilissimi ingenii vir, aliquantulum imbutus literis, horum gesta præliorum maternâ linguâ rhythmo vulgari, ut populus pleniter intelligeret, ingens volumen decenter composuit, et ut vera et faceta verba proferret, duodecim annorum spatium super hoc opus operam dedit. Ne verò vilisceret propter verbum vulgare, non sine præcepto episcopi Eustorgii, et consilio Gauberti Normanni, hoc opus aggressus est. I transcribe this from Heeren's "Essai sur les Croisades," p. 447: whose reference is to Labbé, "Bibliotheca nova MSS.," tome ii, p. 296.

voluptuous sensibility the charm of music and amorous poetry. But the tremendous storm that fell upon Languedoc in the crusade against the Albigeois shook off the flowers of Provençal verse; and the final extinction of the fief of Toulouse, with the removal of the Counts of Provence to Naples, deprived the troubadours of their most eminent patrons. An attempt was made in the next century to revive them, by distributing prizes for the best composition in the Floral Games of Toulouse, which have sometimes been erroneously referred to a higher antiquity.[377] This institution, perhaps, still remains; but even in its earliest period it did not establish the name of any Provençal poet. Nor can we deem these fantastical solemnities, styled Courts of Love, where ridiculous questions of metaphysical gallantry were debated by poetical advocates, under the presidency and arbitration of certain ladies, much calculated to bring forward any genuine excellence. They illustrate, however, what is more immediately my own object, the general ardour for poetry and the manners of those chivalrous ages.[378]

The great reputation acquired by the troubadours, and panegyrics lavished on some of them by Dante and Petrarch, excited a curiosity among literary men, which has been a good deal disappointed by further acquaintance. An excellent French antiquary of the last age, La Curne de St. Palaye, spent a great part of his life in accumulating manuscripts of Provençal poetry, very little of which had ever been printed. Translations from part of this collection, with memorials of the writers, were published by Millot; and we certainly do not often meet with passages in his three volumes which give us any poetical pleasure.[379] Some of the original poems have since been published, and the extracts made from them by the recent historians of southern literature are rather superior. The troubadours chiefly confined themselves to subjects of love, or rather gallantry, and to satires (sirventes), which are sometimes keen and spirited. No romances of chivalry, and hardly any tales, are found among their works. There seems a general deficiency of imagination, and especially of that vivid description which distinguishes works of genius in the rudest period of society. In the poetry of sentiment, their favourite province, they seldom attain any natural expression, and consequently produce no interest. I speak, of course, on the presumption that the best specimens have been exhibited by those who have undertaken the task. It must be allowed, however, that we can not judge of the troubadours at

[377] De Sade, "Vide de Pétrarque," tome i, p. 155. Sismondi, "Litt. du Midi," tome i. p. 228.

[378] For the Courts of Love, see De Sade, "Vie de Pétrarque," tome ii, note 19. Le Grande, "Fabliaux," tome i, p. 270. Roquefort, "État de la Poésie Françoise," p. 94. I have never had patience to look at the older writers who have treated this tiresome subject.

[379] "Histoire Littéraire des Troubadours." (Paris, 1774.)

a greater disadvantage than through the prose translations of Millot. Their poetry was entirely of that class which is allied to music, and excites the fancy or feelings rather by the power of sound than any stimulancy of imagery and passion. Possessing a flexible and harmonious language, they invented a variety of metrical arrangements, perfectly new to the nations of Europe. The Latin hymns were striking, but monotonous, the metre of the northern French unvaried; but in Provençal poetry, almost every length of verse, from two syllables to twelve, and the most intricate disposition of rhymes, were at the choice of the troubadour. The canzoni, the sestine, all the lyric metres of Italy and Spain were borrowed from his treasury. With such a command of poetical sounds, it was natural that he should inspire delight into ears not yet rendered familiar to the artifices of verse; and even now the fragments of these ancient lays, quoted by M. Sismondi and M. Ginguené, seem to possess a sort of charm that has evaporated in translation. Upon this harmony, and upon the facility with which mankind are apt to be deluded into an admiration of exaggerated sentiment in poetry, they depended for their influence. And however vapid the songs of Provence may seem to our apprehensions, they were undoubtedly the source from which poetry for many centuries derived a great portion of its habitual language.[880]

It has been maintained by some antiquaries that the northern Romance, or what we properly call French, was not formed until the tenth century, the common dialect of all France having previously resembled that of Languedoc. This hypothesis may not be indisputable; but the question is not likely to be settled, as scarcely any written specimens of Romance, even of that age, have survived.[881] In the eleventh century, among other more obscure productions, both in prose and metre, there appears what, if unquestioned as to authenticity, would be a valuable monument of this language—the laws of William the Conqueror.

[880] Two very modern French writers, M. Ginguené ("Histoire Littéraire d' Italie," Paris, 1811) and M. Sismondi ("Littérature du Midi de l'Europe," Paris, 1813), have revived the poetical history of the troubadours. To them, still more than to Millot and Tiraboschi, I would acknowledge my obligations for the little I have learned in respect of this forgotten school of poetry. Notwithstanding, however, the heaviness of Millot's work, a fault not imputable to himself, though Ritson, as I remember, calls him, in his own polite style, "a blockhead," it will always be useful to the inquirer into the manners and opinions of the middle ages, from the numerous illustrations it contains of two general facts: the extreme dissoluteness of morals among the higher ranks, and the prevailing animosity of all classes against the clergy.

[881] "Hist. Litt. de la France," tome vii, p. 58. Le Bœuf, according to these Benedictines, has published some poetical fragments of the tenth century; and they quote part of a charter as old as 940 in "Romance" (p. 59). But that antiquary, in a memoir printed in the seventeenth volume of the "Academy of Inscriptions," which throws more light on the infancy of the French language than anything within my knowledge, says only that the earliest specimens of verse in the Royal Library are of the eleventh century au plus tard (p. 717). M. de la Rue is said to have found some poems of the eleventh century in the British Museum (Roquefort, "État de la Poésie Françoise," p. 206). Le Bœuf's fragment may be found in this work (p. 379); it seems nearer to the Provençal than the French dialect.

These are preserved in a manuscript of Ingulfus's "History of Croyland," a blank being left in other copies where they should be inserted.[382] They are written in an idiom so far removed from the Provençal that one would be disposed to think the separation between these two species of Romance of older standing than is commonly allowed. But it has been thought probable that these laws, which, in fact, were nearly a repetition of those of Edward the Confessor, were originally published in Anglo-Saxon, the only language intelligible to the people, and translated, at a subsequent period, by some Norman monk into French.[383]

The use of a popular language became more common after the year 1100. Translations of some books of Scripture and acts of saints were made about that time, or even earlier, and there are French sermons of St. Bernard, from which extracts have been published, in the Royal Library at Paris.[384] In 1126 a charter was granted by Louis VI to the city of Beauvais in French.[385] Metrical compositions are in general the first literature of a nation, and even if no distinct proof could be adduced we might assume their existence before the twelfth century. There is, however, evidence, not to mention the fragments printed by Le Bœuf, of certain lives of saints translated into French verse by Thibault de Vernon, a canon of Rouen, before the middle of the preceding age. And we are told that Taillefer, a Norman minstrel, recited a song or romance on the deeds of Roland, before the army of his countrymen, at the battle of Hastings, in 1066. Philip de Than, a Norman subject of Henry I, seems to be the earliest poet whose works as well as name have reached us, unless we admit a French translation of the work of one Marbode upon precious stones to be more ancient.[386] This De Than wrote a set of rules for computation of time and an account of different calendars. A happy theme for inspiration without doubt! Another performance of the same author is a treatise on birds and beasts, dedicated to Adelaide, queen of Henry I.[387] But a more famous votary of the Muses was Wace, a native

[382] Gale, "XV Script.," tome i, p. 88.

[383] Ritson's "Dissertation on Romance," p. 66. [The laws of William the Conqueror, published in Ingulfus, are translated from a Latin original; the French is of the thirteenth century. It is now doubted whether any French, except a fragment of a translation of Boethius, in verse, is extant of an earlier age than the twelfth. ("Introduction to Hist. of Literat.," third edit., p. 28.)]

[384] "Hist. Litt.," tome ix, p. 149; "Fabliaux," par Barbasan, vol. i, p. 9, edit. 1808; "Mém. de l'Académie des Inscr.," tomes xv and xvii, p. 714, etc.

[385] Mabillon speaks of this as the oldest French instrument he had seen. But the Benedictines quote some of the eleventh century. ("Hist. Litt.," tome vii, p. 59.) This charter is supposed by the authors of "Nouveau Traité de Diplomatique" to be translated from the Latin, tome iv, p. 519. French charters, they say, are not common before the age of Louis IX; and this is confirmed by those published in Martenne's "Thesaurus Anecdotorum," which are very commonly in French from his reign, but hardly ever before.

[386] Ravalière, "Révol. de la Langue Françoise," p. 116, doubts the age of this translation.

[387] "Archæologia," vols. xii and xiii.

of Jersey, who about the beginning of Henry II's reign turned Geoffrey of Monmouth's history into French metre. Besides this poem, called "Le Brut d'Angleterre," he composed a series of metrical histories, containing the transactions of the Dukes of Normandy, from Rollo, their great progenitor, who gave name to the Roman de Rou, down to his own age. Other productions are ascribed to Wace, who was at least a prolific versifier, and, if he seem to deserve no higher title at present, has a claim to indulgence, and even to esteem, as having far excelled his contemporaries, without any superior advantages of knowledge. In emulation, however, of his fame, several Norman writers addicted themselves to composing chronicles, or devotional treatises in metre. The court of our Norman kings was to the early poets in the Langue d'Oil what those of Arles and Toulouse were to the troubadours. Henry I was fond enough of literature to obtain the surname of Beauclerc; Henry II was more indisputably an encourager of poetry; and Richard I has left compositions of his own in one or other (for the point is doubtful) of the two dialects spoken in France.[388]

If the poets of Normandy had never gone beyond historical and religious subjects, they would probably have had less claim to our attention than their brethren of Provence. But a different and far more interesting species of composition began to be cultivated in the latter part of the twelfth century. Without entering upon the controverted question as to the origin of romantic fictions, referred by one party to the Scandinavians, by a second to the Arabs, by others to the natives of Brittany, it is manifest that the actual stories upon which one early and numerous class of romances was founded are related to the traditions of the last people. These are such as turn upon the fable of Arthur; for though we are not entitled to deny the existence of such a personage, his story seems chiefly the creation of Celtic vanity. Traditions current in Brittany, though probably derived from this island, became the basis of Geoffrey of Monmouth's Latin prose, which, as has been seen, was transfused into French metre by Wace.[389] The vicinity of Normandy enabled

[388] Millot says that Richard's sirventes (satirical songs) have appeared in French as well as Provençal, but that the former is probably a translation. ("Hist. des Troubadours," vol. i, p. 54.) Yet I have met with no writer who quotes them in the latter language, and M. Ginguené, as well as Le Grand d'Aussy, considers Richard as a trouveur.

[Raynouard has since published, in Provençal, the song of Richard on his captivity, which had several times appeared in French. It is not improbable that he wrote it in both dialects. (Leroux de Lincy, "Chants Historiques Français," vol. i, p. 55.) Richard also composed verses in the Poitevin dialect, spoken at that time in Maine and Anjou, which resembles the Langue d'Oc more than that of northern France, though, especially in the latter countries, it gave way not long afterward. (Id., p. 77.)]

[389] This derivation of the romantic stories of Arthur, which Le Grand d'Aussy ridiculously attributes to the jealousy entertained by the English of the renown of Charlemagne, is stated in a very perspicuous and satisfactory manner by Mr. Ellis, in his "Specimens of Early English Metrical Romances."

its poets to enrich their narratives with other Armorican fictions, all relating to the heroes who had surrounded the table of the son of Uther.[390] An equally imaginary history of Charlemagne gave rise to a new family of romances. The authors of these fictions were called Trouveurs, a name obviously identical with that of Troubadours. But except in name there was no resemblance between the minstrels of the northern and southern dialects. The invention of one class was turned to description, that of the other to sentiment; the first were epic in their form and style, the latter almost always lyric. We can not perhaps give a better notion of their dissimilitude than by saying that one school produced Chaucer and the other Petrarch. Besides these romances of chivalry, the trouveurs displayed their powers of lively narration in comic tales or fabliaux (a name sometimes extended to the higher romance), which have aided the imagination of Boccaccio and La Fontaine. These compositions are certainly more entertaining than those of the troubadours; but, contrary to what I have said of the latter, they often gain by appearing in a modern dress. Their versification, which doubtless had its charm when listened to around the hearth of an ancient castle, is very languid and prosaic, and suitable enough to the tedious prolixity into which the narrative is apt to fall; and though we find many sallies of that arch and sprightly simplicity which characterizes the old language of France as well as England, it requires, upon the whole, a factitious taste to relish these Norman tales, considered as poetry in the higher sense of the word, distinguished from metrical fiction.

A manner very different from that of the fabliaux was adopted in the "Roman de la Rose," begun by William de Loris about 1250, and completed by John de Meun half a century later. This poem, which contains about sixteen thousand lines in the usual octo-syllable verse, from which the early French writers seldom deviated, is an allegorical vision, wherein love and the other passions or qualities connected with it pass over the stage, without the intervention, I believe, of any less abstract personages. Though similar allegories were not unknown to the ancients, and, which is more to the purpose, may be found in other productions of the thirteenth century, none had been constructed so elaborately as that of the "Roman de la Rose." Cold and tedious as we now consider this species of poetry, it originated in the creative power of imagination, and appealed to more refined feel-

[390] [Though the stories of Arthur were not invented by the English out of jealousy of Charlemagne, it has been ingeniously conjectured and rendered highly probable by Mr. Sharon Turner that the history by Geoffrey of Monmouth was composed with a political view to display the independence and dignity of the British crown, and was intended, consequently, as a counterpoise to that of Turpin, which never became popular in England. It is doubtful, in my judgment, whether Geoffrey borrowed so much from Armorican traditions as he pretended.]

ing than the common metrical narratives could excite. This poem was highly popular in the middle ages, and became the source of those numerous allegories which had not ceased in the seventeenth century.

The French language was employed in prose as well as in metre. Indeed, it seems to have had almost an exclusive privilege in this respect. "The language of Oil," says Dante in his treatise on vulgar speech, "prefers its claim to be ranked above those of Oc and Si (Provençal and Italian), on the ground that all translations or compositions in prose have been written therein, from its greater facility and grace, such as the books compiled from the Trojan and Roman stories, the delightful fables about Arthur, and many other works of history and science." [391] I have mentioned already the sermons of St. Bernard and translations from Scripture. The laws of the kingdom of Jerusalem purport to have been drawn up immediately after the first crusade, and though their language has been materially altered, there seems no doubt that they were originally compiled in French.[392] Besides some charters, there are said to have been prose romances before the year 1200.[393] Early in the next age Ville Hardouin, seneschal of Campagne, recorded the capture of Constantinople in the fourth crusade, an expedition the glory and reward of which he had personally shared, and, as every original work of prior date has either perished or is of small importance, may be deemed the father of French prose. The "Establishments" of St. Louis, and the law treatise of Beaumanoir, fill up the interval of the thirteenth century, and before its conclusion we must suppose the excellent memoirs of Joinville to have been composed, since they are dedicated to Louis X in 1315, when the author could hardly be less than ninety years of age. Without prosecuting any further the history of French literature, I will only mention the translations of Livy and Sallust, made in the reign and by the order of John, with those of Cæsar, Suetonius, Ovid, and parts of Cicero, which are due to his successor, Charles V.[394]

[391] "Prose e Rime di Dante," Venez., 1758, tome iv, p. 261. Dante's words, biblia cum Trojanorum Romanorumque gestibus compilata, seem to bear no other meaning than what I have given. But there may be a doubt whether biblia is ever used except for the Scriptures; and the Italian translator renders it cioè la bibbia, i fatti de i Trojani, e de i Romani. In this case something is wrong in the original Latin, and Dante will have alluded to the translations of parts of Scripture made into French, as mentioned in the text.

[392] The "Assises de Jérusalem" have undergone two revisions; one, in 1250, by order of John d'Ibelin, Count of Jaffa, and a second in 1369, by sixteen commissioners chosen by the states of the kingdom of Cyprus. Their language seems to be such as might be expected from the time of the former revision.

[393] Several prose romances were written or translated from the Latin, about 1170 and afterward. Mr. Ellis seems inclined to dispute their antiquity. But, besides the authorities of La Ravalière and Tressan, the latter of which is not worth much, a late very extensively informed writer seems to have put this matter out of doubt. (Roquefort Flamericourt, "État de là Poésie Française dans les 12me et 13me siècles," Paris, 1815, p. 147.)

[394] Villaret, "Hist. de France," tome

I confess myself wholly uninformed as to the original formation of the Spanish language, and as to the epoch of its separation into the two principal dialects of Castile and Portugal, or Gallicia;[395] nor should I perhaps have alluded to the literature of that peninsula were it not for a remarkable poem which shines out among the minor lights of those times. This is a metrical life of the Cid Ruy Diaz, written in a barbarous style and with the rudest inequality of measure, but with a truly Homeric warmth and vivacity of delineation. It is much to be regretted that the author's name has perished; but its date has been referred by some to the middle of the twelfth century, while the hero's actions were yet recent, and before the taste of Spain had been corrupted by the Provençal troubadours, whose extremely different manner would, if it did not pervert the poet's genius, at least have impeded his popularity. A very competent judge has pronounced the poem of the Cid to be "decidedly and beyond comparison the finest in the Spanish language." It is at least superior to any that was written in Europe before the appearance of Dante.[396]

A strange obscurity envelops the infancy of the Italian language. Though it is certain that grammatical Latin had ceased to be employed in ordinary discourse, at least from the time of Charlemagne, we have not a single passage of undisputed authenticity, in the current idiom, for nearly four centuries afterward. Though Italian phrases are mixed up in the barbarous jargon of some charters, not an instrument is extant in that language before the year 1200, unless we may reckon one in the Sardinian dialect (which I believe was rather Provençal than Italian), noticed by Muratori.[397] Nor is there a vestige of Italian poetry older than a few fragments of Ciullo d' Alcamo, a

xi, p. 121; De Sade, "Vie de Pétrarque," tome iii, p. 548. Charles V had more learning than most princes of his time. Christine de Pisan, a lady who has written memoirs, or rather a eulogy of him, says that his father le fist introdire en lettres moult suffisamment, et tant que competemment entendoit son Latin, et souffisamment scavoit les regles de grammaire; la quelle chose pleust a dieu qu'ainsi fust accoutumée entre les princes. ("Collect. de Mém.," tome iv, pp. 103, 190, etc.)

[395] The earliest Spanish that I remember to have seen is an instrument in Martenne, "Thesaurus Anecdotorum," tome i, p. 263; the date of which is 1095. Persons more conversant with the antiquities of that country may possibly go further back. Another, of 1101, is published in Marina's "Teoria de las Cortes," tome iii, p. 1. It is in a Vidimus by Peter the Cruel, and can not, I presume, have been a translation from the Latin. Yet the editors of "Nouveau Tr. de Diplom." mention a charter of 1243 as the earliest they are acquainted with in the Spanish language (tome iv, p. 525).

Charters in the German language, according to the same work, first appear in the time of the Emperor Rodolph, after 1272, and became usual in the next century (p. 523). But Struvius mentions an instrument of 1235 as the earliest in German. ("Corp. Hist. Germ.," p. 457.)

[396] An extract from this poem was published in 1808 by Mr. Southey, at the end of his "Chronicle of the Cid," the materials of which it partly supplied, accompanied by an excellent version by a gentleman who is distinguished, among many other talents, for an unrivalled felicity in expressing the peculiar manner of authors whom he translates or imitates. M. Sismondi has given other passages in the third volume of his "History of Southern Literature." This popular and elegant work contains some interesting and not very common information as to the early Spanish poets in the Provençal dialect, as well as those who wrote in Castilian.

[397] "Dissert." 32.

Sicilian, who must have written before 1193, since he mentions Saladin as then living.[898] This may strike us as the more remarkable when we consider the political circumstances of Italy in the eleventh and twelfth centuries. From the struggles of her spirited republics against the emperors and their internal factions, we might, upon all general reasoning, anticipate the early use and vigorous cultivation of their native language. Even if it were not yet ripe for historians and philosophers, it is strange that no poet should have been inspired with songs of triumph or invective by the various fortunes of his country. But, on the contrary, the poets of Lombardy became troubadours, and wasted their genius in Provençal love strains at the courts of princes. The Milanese and other Lombard dialects were, indeed, exceedingly rude; but this rudeness separated them more decidedly from Latin: nor is it possible that the Lombards could have employed that language intelligibly for any public or domestic purpose. And, indeed, in the earliest Italian compositions that have been published, the new language is so thoroughly formed that it is natural to infer a very long disuse of that from which it was derived. The Sicilians claim the glory of having first adapted their own harmonious dialect to poetry. Frederick II both encouraged their art and cultivated it; among the very first essays of Italian verse we find his productions and those of his chancellor, Piero delle Vigne. Thus Italy was destined to owe the beginnings of her national literature to a foreigner and an enemy. These poems are very short and few; those ascribed to St. Francis about the same time are hardly distinguishable from prose; but after the middle of the thirteenth century the Tuscan poets awoke to a sense of the beauties which their native language, refined from the impurities of vulgar speech,[899] could display, and the genius of Italian literature was rocked upon the restless waves of the Florentine democracy. Ricordano Malespini, the first historian, and nearly the first prose writer in Italian, left memorials of the republic down to the year 1281, which was that of his death, and it was continued by Giacchetto Malespini to 1286. These are little inferior in purity of style to the best Tuscan authors; for it is the singular fate of that language to have spared itself all intermediate stages of refinement, and, starting the last in the race, to have arrived almost instantane-

[898] Tiraboschi, tome iv, p. 340.

[899] Dante, in his treatise "De vulgari Eloquentiâ," reckons fourteen or fifteen dialects spoken in different parts of Italy, all of which were debased by impure modes of expression. But the "noble, principal, and courtly Italian idiom" was that which belonged to every city, and seemed to belong to none, and which, if Italy had a court, would be the language of that court (pp. 274, 277).

Allowing for the metaphysical obscurity in which Dante chooses to envelop the subject, this might perhaps be said at present. The Florentine dialect has its peculiarities, which distinguish it from the general Italian language, though these are seldom discerned by foreigners, nor always by natives, with whom Tuscan is the proper denomination of their national tongue.

ously at the goal. There is an interval of not much more than half a century between the short fragment of Ciullo d' Alcamo, mentioned above, and the poems of Guido Guinizzelli, Guitone d' Arezzo, and Guido Cavalcante, which, in their diction and turn of thought, are sometimes not unworthy of Petrarch.[400]

But at the beginning of the next age arose a much greater genius, the true father of Italian poetry, and the first name in the literature of the middle ages. This was Dante, or Durante Alighieri, born in 1265, of a respectable family at Florence. Attached to the Guelf party, which had then obtained a final ascendency over its rival, he might justly promise himself the natural reward of talents under a free government, public trust and the esteem of his compatriots. But the Guelfs unhappily were split into two factions, the Bianchi and the Neri, with the former of whom, and, as it proved, the unsuccessful side, Dante was connected. In 1300 he filled the office of one of the Priori, or chief magistrates at Florence; and having manifested in this, as was alleged, some partiality toward the Bianchi, a sentence of proscription passed against him about two years afterward, when it became the turn of the opposite faction to triumph. Banished from his country, and baffled in several efforts of his friends to restore their fortunes, he had no resource but at the courts of the Scalas at Verona and other Italian princes, attaching himself in adversity to the imperial interests, and tasting, in his own language, the bitterness of another's bread.[401] In this state of exile he finished, if he did not commence, his great poem, the "Divine Comedy"; a representation of the three kingdoms of futurity, Hell, Purgatory, and Paradise, divided into one hundred cantos, and containing about fourteen thousand lines. He died at Ravenna in 1321.

Dante is among the very few who have created the national poetry of their country. For notwithstanding the polished elegance of some earlier Italian verse, it had been confined to amorous sentiment; and it was yet to be seen that the language could sustain, for a greater length than any existing poem ex-

[400] Tiraboschi, tome iv, pp. 309–377. Ginguené, vol. i, c. 6. The style of the "Vita Nuova" of Dante, written soon after the death of his Beatrice, which happened in 1290, is hardly distinguishable, by a foreigner, from that of Machiavel or Castiglione. Yet so recent was the adoption of this language that the celebrated master of Dante, Brunetto Latini, had written his "Tesoro" in French; and gives as a reason for it that it was a more agreeable and useful language than his own. Et se aucuns demandoit pourquoi chis livre est ecris en Romans, selon la raison de France, pour chose que nous sommes Ytalien, je diroie que ch'est pour chose que nous sommes en France; l'autre pour chose que la parleure en est plus delitable et plus commune a toutes gens. There is said to be a manuscript history of Venice down to 1275, in the Florentine Library, written in French by Martin de Canale, who says that he has chosen that language, parceque la langue franceise cort parmi le monde, et est la plus delitable a lire et a oir que nulle autre. (Ginguené, vol. i, p. 384.)

[401] "Tu proverai si (says Cacciaguida to him) come sà di sale
Il pane altrui, e come è duro calle
Il scendere e 'l salir per altrui scale."
"Paradis.," cant. 16.

cept the "Iliad," the varied style of narration, reasoning, and ornament. Of all writers, he is the most unquestionably original. Virgil was, indeed, his inspiring genius, as he declares himself, and as may sometimes be perceived in his diction; but his tone is so peculiar and characteristic that few readers would be willing at first to acknowledge any resemblance. He possessed, in an extraordinary degree, a command of language, the abuse of which led to his obscurity and licentious innovations. No poet ever excelled him in conciseness and in the rare talent of finishing his pictures by a few bold touches—the merit of Pindar in his better hours. How prolix would the stories of Francesca or of Ugolino have become in the hands of Ariosto, or of Tasso, or of Ovid, or of Spenser! This excellence, indeed, is most striking in the first part of his poem. Having formed his plan so as to give an equal length to the three regions of his spiritual world, he found himself unable to vary the images of hope or beatitude, and the Paradise is a continual accumulation of descriptions, separately beautiful, but uniform and tedious. Though images derived from light and music are the most pleasing, and can be borne longer in poetry than any others, their sweetness palls upon the sense of frequent repetition, and we require the intermixture of sharper flavours. Yet there are detached passages of great excellence in this third part of Dante's poem; and even in the long theological discussions which occupy the greater proportion of its thirty-three cantos, it is impossible not to admire the enunciation of abstract positions with remarkable energy, conciseness, and sometimes perspicuity. The first twelve cantos of the Purgatory are an almost continual flow of soft and brilliant poetry. The last seven are also very splendid; but there is some heaviness in the intermediate parts. Fame has justly given the preference to the "Inferno," which displays throughout a more vigorous and masterly conception; but the mind of Dante can not be thoroughly appreciated without a perusal of his entire poem.

The most forced and unnatural turns, the most barbarous licenses of idiom, are found in this poet, whose power of expression is at other times so peculiarly happy. His style is indeed generally free from those conceits of thought which discredited the other poets of his country; but no sense is too remote for a word which he finds convenient for his measure or his rhyme. It seems, indeed, as if he never altered a line on account of the necessity of rhyme, but forced another, or perhaps a third, into company with it. For many of his faults no sufficient excuse can be made. But it is candid to remember that Dante, writing almost in the infancy of a language which he contributed to create, was not to anticipate that words which he

borrowed from the Latin and from the provincial dialects would by accident, or through the timidity of later writers, lose their place in the classical idiom of Italy. If Petrarch, Bembo, and a few more had not aimed rather at purity than copiousness, the phrases which now appear barbarous, and are at least obsolete, might have been fixed by use in poetical language.

The great characteristic excellence of Dante is elevation of sentiment, to which his compressed diction and the emphatic cadences of his measure admirably correspond. We read him, not as an amusing poet, but as a master of moral wisdom, with reverence and awe. Fresh from the deep and serious though somewhat barren studies of philosophy, and schooled in the severer discipline of experience, he has made of his poem a mirror of his mind and life, the register of his solicitudes and sorrows, and of the speculations in which he sought to escape their recollection. The banished magistrate of Florence, the disciple of Brunetto Latini, the statesman accustomed to trace the varying fluctuations of Italian faction, is forever before our eyes. For this reason, even the prodigal display of erudition, which in an epic poem would be entirely misplaced, increases the respect we feel for the poet, though it does not tend to the reader's gratification. Except Milton, he is much the most learned of all the great poets, and, relatively to his age, far more learned than Milton. In one so highly endowed by Nature, and so consummate by instruction, we may well sympathize with a resentment which exile and poverty rendered perpetually fresh. The heart of Dante was naturally sensible, and even tender; his poetry is full of simple comparisons from rural life; and the sincerity of his early passion for Beatrice pierces through the veil of allegory which surrounds her. But the memory of his injuries pursues him into the immensity of eternal light; and, in the company of saints and angels, his unforgiving spirit darkens at the name of Florence.[402]

This great poem was received in Italy with that enthusiastic admiration which attaches itself to works of genius only in ages too rude to listen to the envy of competitors or the fastidiousness of critics. Almost every library in that country contains manuscript copies of the "Divine Comedy," and an account of those who have abridged or commented upon it would swell to a volume. It was thrice printed in the year 1472, and at least nine times within the fifteenth century. The city of Florence in 1373, with a magnanimity which almost redeems her original injustice, appointed a public professor to read lectures upon Dante; and it was hardly less honourable to the poet's memory that the first person selected for this office was Boccaccio. The

[402] "Paradiso," cant. 16.

Universities of Pisa and Piacenza imitated this example; but it is probable that Dante's abstruse philosophy was often more regarded in their chairs than his higher excellences.[403] Italy, indeed, and all Europe, had reason to be proud of such a master. Since Claudian there had been seen for nine hundred years no considerable body of poetry, except the Spanish poem of the Cid, of which no one had heard beyond the peninsula, that could be said to pass mediocrity; and we must go much further back than Claudian to find any one capable of being compared with Dante. His appearance made an epoch in the intellectual history of modern nations, and banished the discouraging suspicion which long ages of lethargy tended to excite, that Nature had exhausted her fertility in the great poets of Greece and Rome. It was as if, at some of the ancient games, a stranger had appeared upon the plain, and thrown his quoit among the marks of former casts which tradition had ascribed to the demigods. But the admiration of Dante, though it gave a general impulse to the human mind, did not produce imitators. I am unaware at least of any writer, in whatever language, who can be said to have followed the steps of Dante: I mean not so much in his subject as in the character of his genius and style. His orbit is still all his own, and the track of his wheels can never be confounded with that of a rival.[404]

In the same year that Dante was expelled from Florence a notary, by name Petracco, was involved in a similar banishment. Retired to Arezzo, he there became the father of Francis Petrarch. This great man shared, of course, during his early years, in the adverse fortune of his family, which he was invincibly reluctant to restore, according to his father's wish, by the profession of jurisprudence. The strong bias of Nature determined him to polite letters and poetry. These are seldom the fountains of wealth; yet they would perhaps have been such to Petrarch if his temper could have borne the sacrifice of liberty for any worldly acquisitions. At the city of Avignon, where his parents had latterly resided, his graceful appearance and the reputation of his talents attracted one of the Colonna family, then Bishop of Lombes in Gascony. In him, and in other members of that great house, never so illustrious as in the fourteenth century, he experienced the union of patronage and friendship. This, however, was not confined to the Colonnas. Unlike Dante, no poet was ever so liberally and sincerely encouraged by the great; nor did any perhaps ever carry to that perilous inter-

[403] Velli, "Vita di Dante." Tiraboschi.

[404] The source from which Dante derived the scheme and general idea of his poem has been a subject of inquiry in Italy. To his original mind one might have thought the sixth Æneid would have sufficed. But besides several legendary visions of the twelfth and thirteenth centuries, it seems probable that he derived hints from the Tesoretto of his master in philosophical studies, Brunetto Latini. (Ginguené, tome ii, p. 8.)

course a spirit more irritably independent, or more free from interested adulation. He praised his friends lavishly because he loved them ardently; but his temper was easily susceptible of offence, and there must have been much to tolerate in that restlessness and jealousy of reputation which is perhaps the inevitable failing of a poet.[405] But everything was forgiven to a man who was the acknowledged boast of his age and country. Clement VI conferred one or two sinecure benefices upon Petrarch, and would probably have raised him to a bishopric if he had chosen to adopt the ecclesiastical profession. But he never took orders, the clerical tonsure being a sufficient qualification for holding canonries. The same Pope even afforded him the post of apostolical secretary, and this was repeated by Innocent VI. I know not whether we should ascribe to magnanimity or to a politic motive the behaviour of Clement VI toward Petrarch, who had pursued a course as vexatious as possible to the Holy See. For not only he made the residence of the supreme pontiffs at Avignon, and the vices of their court, the topic of invectives, too well founded to be despised, but he had ostentatiously put himself forward as the supporter of Nicola di Rienzi in a project which could evidently have no other aim than to wrest the city of Rome from the temporal sovereignty of its bishop. Nor was the friendship and society of Petrarch less courted by the most respectable Italian princes: by Robert, King of Naples, by the Visconti, the Correggi of Parma, the famous Doge of Venice, Andrew Dandolo, and the Carrara family of Padua, under whose protection he spent the latter years of his life. Stories are related of the respect shown to him by men in humbler stations which are perhaps still more satisfactory.[406] But the most conspicuous testimony of public esteem

[405] There is an unpleasing proof of this quality in a letter to Boccaccio on Dante, whose merit he rather disingenuously extenuates, and whose popularity evidently stung him to the quick. (De Sade, tome iii, p. 512.) Yet we judge so ill of ourselves that Petrarch chose envy as the vice from which of all others he was most free. In his dialogue with St. Augustine he says: Quiquid libuerit, dicito; modo me non accuses invidiæ. Aug. Utinam non tibi magis superbia quam invidia nocuisset: nam oc crimine, me judice, liber es. ("De Contemptu Mundi," edit. 1581, p. 342.)

I have read in some modern book, but know not where to seek the passage, that Petrarch did not intend to allude to Dante in the letter to Boccaccio mentioned above, but rather to Zanobi Strata, a contemporary Florentine poet, whom, however forgotten at present, the bad taste of a party in criticism preferred to himself.—Matteo Villani mentions them together as the two great ornaments of his age. This conjecture seems probable, for some expressions are not in the least applicable to Dante. But whichever was intended, the letter equally shows the irritable humour of Petrarch.

[406] A goldsmith of Bergamo, by name Henry Capra, smitten with an enthusiastic love of letters, and of Petrarch, earnestly requested the honour of a visit from the poet. The house of this good tradesman was full of representations of his person, and of inscriptions with his name and arms. No expense had been spared in copying all his works as they appeared. He was received by Capra with a princely magnificence; lodged in a chamber hung with purple, and a splendid bed on which no one before or after him was permitted to sleep. Goldsmiths, as we may judge by this instance, were opulent persons, yet the friends of Petrarch dissuaded him from the visit, as derogatory to his own elevated station. (De Sade, tome iii, p. 496.)

was bestowed by the city of Rome, in his solemn coronation as laureate poet in the Capitol. This ceremony took place in 1341; and it is remarkable that Petrarch had at that time composed no works which could, in our estimation, give him pretensions to so singular an honour.

The moral character of Petrarch was formed of dispositions peculiarly calculated for a poet. An enthusiast in the emotions of love and friendship, of glory, of patriotism, of religion, he gave the rein to all their impulses; and there is not perhaps a page in his Italian writing which does not bear the trace of one or other of these affections. By far the most predominant, and that which has given the greatest celebrity to his name, is his passion for Laura. Twenty years of unrequited and almost unaspiring love were lightened by song; and the attachment, which, having long survived the beauty of its object,[407] seems to have at one time nearly passed from the heart to the fancy, was changed to an intenser feeling, and to a sort of celestial adoration, by her death. Laura, before the time of Petrarch's first accidental meeting with her, was united in marriage with another—a fact which, besides some more particular evidence, appears to me deducible from the whole tenor of his poetry.[408] Such a passion is undoubtedly not capable of a moral defence; nor would I seek its palliation so much in the prevalent manners of his age, by which, however, the conduct of even good men is generally not a little influenced, as in the infirmity of Petrarch's character, which induced him both to obey and to justify the emotions of his heart. The lady, too, whose virtue and prudence we are not to question, seems to have tempered the light and shadow of her countenance so as to preserve her admirer from despair, and consequently to prolong his sufferings and servitude.

The general excellences of Petrarch are his command over the music of his native language, his correctness of style, scarcely two or three words that he has used having been rejected by later writers, his exquisite elegance of diction, improved by the perpetual study of Virgil; but, far above all, that tone of pure and melancholy sentiment which has something in it unearthly, and forms a strong contrast to the amatory poems of antiquity. Most of these are either licentious or uninteresting; and those of Catullus, a man endowed by Nature with deep and serious sensibility, and a poet, in my opinion, of greater and more varied

[407] See the beautiful sonnet, Erano i capei d'oro all' aura sparsi. In a famous passage of his "Confessions," he says: Corpus illud egregium morbis et crebris partubus exhaustum, multum pristini vigoris amisit. Those who maintain the virginity of Laura are forced to read perturbationibus, instead of partubus. Two manuscripts in the Royal Library at Paris have the contraction ptbus, which leaves the matter open to controversy. De Sade contends that "crebris" is less applicable to "perturbationibus" than to "partubus." I do not know that there is much in this; but I am clear that corpus exhaustum partubus is much the more elegant Latin expression of the two.

[408] [Note III.]

genius than Petrarch, are contaminated above all the rest with the most degrading grossness. Of this there is not a single instance in the poet of Vaucluse; and his strains, diffused and admired as they have been, may have conferred a benefit that criticism can not estimate, in giving elevation and refinement to the imaginations of youth. The great defect of Petrarch was his want of strong original conception, which prevented him from throwing off the affected and overstrained manner of the Provençal troubadours, and of the earlier Italian poets. Among his poems, the "Triumphs" are perhaps superior to the odes, as the latter are to the sonnets; and of the latter, those written subsequently to the death of Laura are in general the best. But that constrained and laborious measure can not equal the graceful flow of the canzone, or the vigorous compression of the terza rima. The "Triumphs" have also a claim to superiority, as the only poetical composition of Petrarch that extends to any considerable length. They are in some degree perhaps an imitation of the dramatic "Mysteries," and form at least the earliest specimens of a kind of poetry not uncommon in later times, wherein real and allegorical personages are intermingled in a mask or scenic representation.[409]

None of the principal modern languages was so late in its formation, or in its application to the purposes of literature, as the English. This arose, as is well known, out of the Saxon branch of the Great Teutonic stock spoken in England till after the conquest. From this mother dialect our English differs less in respect of etymology than of syntax, idiom, and flection. In so gradual a transition as probably took place, and one so sparingly marked by any existing evidence, we can not well assign a definite origin to our present language. The question of identity is almost as perplexing in languages as in individuals. But, in the reign of Henry II, a version of Wace's poem of Brut, by one Layamon, a priest of Ernly-upon-Severn, exhibits as it were the chrysalis of the English language, in a very corrupt modification of the Anglo-Saxon.[410] Very soon afterward the new

[409] [I leave this as it stood. But my own taste has changed. I retract altogether the preference here given to the "Triumphs" above the "Canzoni," and doubt whether the latter are superior to the "Sonnets." This at least is not the opinion of Italian critics, who ought to be the most competent. 1848.]

[410] A sufficient extract from this work of Layamon has been published by Mr. Ellis, in his "Specimens of Early English Poetry," vol. i, p. 61. This extract contains, he observes, no word which we are under the necessity of ascribing to a French origin.

[Layamon, as is now supposed, wrote in the reign of John. See Sir Frederick Madden's edition, and Mr. Wright's "Biographia Literaria." The best reason seems to be that he speaks of Eleanor, queen of Henry, as then dead, which took place in 1204. But it requires a vast knowledge of the language to find a date by the use or disuse of particular forms: the idiom of one part of England not being similar to that of another in grammatical flections. See "Quarterly Review" for April, 1848.

The entire work of Layamon contains a small number of words taken from the French; about fifty in the original text, and about forty more in that of a manuscript, perhaps half a century later, and very considerably altered in consequence

formation was better developed; and some metrical pieces, referred by critics to the earlier part of the thirteenth century, differ but little from our legitimate grammar.[411] About the beginning of Edward I's reign, Robert, a monk of Gloucester, composed a metrical chronicle from the history of Geoffrey of Monmouth, which he continued to his own time. This work, with a similar chronicle of Robert Manning, a monk of Brunne (Bourne), in Lincolnshire, nearly thirty years later, stand at the head of our English poetry. The romance of Sir Tristrem, ascribed to Thomas of Erceldoune, surnamed the Rhymer, a Scottish minstrel, has recently laid claim to somewhat higher antiquity.[412] In the fourteenth century a great number of metrical romances were translated from the French. It requires no small portion of indulgence to speak favourably of any of these early English productions. A poetical line may, no doubt, occasionally be found, but in general the narration is as heavy and prolix as the versification is unmusical.[413] The first English writer who can be read with approbation is William Langland, the author of Piers Plowman's vision, a severe satire upon the clergy. Though his measure is more uncouth than that of his predecessors, there is real energy in his conceptions, which he caught not from the chimeras of knight-errantry, but the actual manners and opinions of his time.

The very slow progress of the English language, as an instrument of literature, is chiefly to be ascribed to the effects of the Norman conquest, in degrading the native inhabitants and transferring all power and riches to foreigners. The barons, without perhaps one exception, and a large proportion of the gentry, were of French descent, and preserved among themselves the

of the progress of our language. Many of these words derived from the French express new ideas, as admiral, astronomy, baron, mantel, etc. "The language of Layamon," says Sir Frederick Madden, "belongs to that transition period in which the groundwork of Anglo-Saxon phraseology and grammar still existed, although gradually yielding to the influence of the popular forms of speech. We find in it, as in the later portion of the Saxon Chronicle, marked indications of a tendency to adopt those terminations and sounds which characterize a language in a state of change, and which are apparent also in some other branches of the Teutonic tongue. The use of *a* as an article —the change of the Anglo-Saxon terminations *a* and *as* into *e* and *es*, as well as the disregard of inflections and genders—the masculine forms given to neuter nouns in the plural—the neglect of the feminine terminations of adjectives and pronouns, and confusion between the definite and indefinite declensions—the introduction of the preposition *to* before infinitives, and occasional use of weak preterites of verbs and participles instead of strong—the constant recurrence of *er* for *or* in the plurals of verbs—together with the uncertainty of the rule for the government of prepositions — all these variations, more or less visible in the two texts of Layamon, combined with the vowel changes, which are numerous though not altogether arbitrary, will show at once the progress made in two centuries, in departing from the ancient and purer grammatical forms, as found in Anglo-Saxon manuscripts." (Preface, p. xxviii.)]

[411] Warton's "History of English Poetry"; Ellis's "Specimens."

[412] This conjecture of Scott has not been favourably received by later critics.

[413] Warton printed copious extracts from some of these. Ritson gave several of them entire to the press. And Mr. Ellis has adopted the only plan which could render them palatable, by intermingling short passages, where the original is rather above its usual mediocrity, with his own lively analysis.

speech of their fathers. This continued much longer than we should naturally have expected; even after the loss of Normandy had snapped the thread of French connections, and they began to pride themselves in the name of Englishmen, and in the inheritance of traditionary English privileges. Robert of Gloucester has a remarkable passage, which proves that in his time, somewhere about 1290, the superior ranks continued to use the French language.[414] Ralph Higden, about the early part of Edward III's reign, though his expressions do not go the same length, asserts that "gentlemen's children are taught to speak French from the time they are rocked in their cradle; and uplandish (country) or inferior men will liken themselves to gentlemen, and learn with great business for to speak French, for to be the more told of." Notwithstanding, however, this predominance of French among the higher class, I do not think that some modern critics are warranted in concluding that they were in general ignorant of the English tongue. Men living upon their estates among their tenantry, whom they welcomed in their halls, and whose assistance they were perpetually needing in war and civil frays, would hardly have permitted such a barrier to obstruct their intercourse. For we can not, at the utmost, presume that French was so well known to the English commonalty in the thirteenth century as English is at present to the same class in Wales and the Scottish Highlands. It may be remarked also that the institution of trial by jury must have rendered a knowledge of English almost indispensable to those who administered justice. There is a proclamation of Edward I in Rymer, where he endeavours to excite his subjects against the King of France by imputing to him the intention of conquering the country and abolishing the English language (linguam delere Anglicanam), and this is frequently repeated in the proclamations of Edward III.[415] In his time, or perhaps a little before, the native language had become more familiar than French in common use, even with the court and nobility. Hence the numerous translations of metrical romances, which are chiefly referred to his reign. An important change was effected in 1362 by a statute, which enacts that all pleas in courts of justice shall be pleaded, debated, and judged in English. But Latin was by this act to be employed in drawing the record; for there seems to have still continued a sort of prejudice against the use of English as a written language. The earliest English instrument known to exist is said to bear the date of 1343.[416] And there

[414] The evidences of this general employment and gradual disuse of French in conversation and writing are collected by Tyrwhitt, in a dissertation on the ancient English language, prefixed to the fourth volume of his edition of Chaucer's "Canterbury Tales"; and by Ritson, in the preface to his "Metrical Romances," i, 70.

[415] Rymer, tome v, p. 490; tome vi, p. 642, et alibi.

[416] Ritson, p. 80. There is one in Rymer of the year 1385.

are but few entries in our own tongue upon the rolls of Parliament before the reign of Henry VI, after whose accession its use becomes very common.[417] Sir John Mandeville, about 1356, may pass for the father of English prose, no original work being so ancient as his "Travels." But the translation of the Bible and other writings by Wicliffe, nearly thirty years afterward, taught us the copiousness and energy of which our native dialect was capable; and it was employed in the fifteenth century by two writers of distinguished merit, Bishop Pecock and Sir John Fortescue.

But the principal ornament of our English literature was Geoffrey Chaucer, who, with Dante and Petrarch, fills up the triumvirate of great poets in the middle ages. Chaucer was born in 1328, and his life extended to the last year of the fourteenth century. That rude and ignorant generation was not likely to feel the admiration of native genius as warmly as the compatriots of Petrarch; but he enjoyed the favour of Edward III, and still more conspicuously of John, Duke of Lancaster; his fortunes were far more prosperous than have usually been the lot of poets; and a reputation was established beyond competition in his lifetime, from which no succeeding generation has withheld its sanction. I can not, in my own taste, go completely along with the eulogies that some have bestowed upon Chaucer, who seems to me to have wanted grandeur, where he is original, both in conception and in language. But in vivacity of imagination and ease of expression he is above all poets of the middle time, and comparable perhaps to the greatest of those who have followed. He invented, or rather introduced from France, and employed with facility, the regular iambic couplet; and though it was not to be expected that he should perceive the capacities latent in that measure, his versification, to which he accommodated a very licentious and arbitrary pronunciation, is uniform and harmonious.[418] It is chiefly, indeed, as a comic poet, and a minute observer of manners and circumstances, that Chaucer excels. In serious and moral poetry he is frequently languid and diffuse; but he springs like Antæus from the earth when his subject changes to coarse satire or merry narrative. Among his more elevated compositions, the "Knight's Tale" is abundantly sufficient to immortalize Chaucer, since it would be difficult to find anywhere a story better conducted, or told with more animation and strength of fancy. The second place may be given to his "Troilus and Cresseide," a beautiful and interesting poem, though

[417] [Note IV.]

[418] See Tyrwhitt's essay on the language and versification of Chaucer, in the fourth volume of his edition of the "Canterbury Tales." The opinion of this eminent critic has lately been controverted by Dr. Nott, who maintains the versification of Chaucer to have been wholly founded on accentual and not syllabic regularity. I adhere, however, to Tyrwhitt's doctrine.

enfeebled by expansion. But perhaps the most eminent, or at any rate the most characteristic testimony to his genius will be found in the prologue to his "Canterbury Tales"—a work entirely and exclusively his own, which can seldom be said of his poetry, and the vivid delineations of which perhaps very few writers but Shakespeare could have equalled. As the first original English poet, if we except Langland, as the inventor of our most approved measure, as an improver, though with too much innovation, of our language, and as a faithful witness to the manners of his age, Chaucer would deserve our reverence, if he had not also intrinsic claims for excellences, which do not depend upon any collateral considerations.

The last circumstance which I shall mention, as having contributed to restore society from the intellectual degradation into which it had fallen during the dark ages, is the revival of classical learning. The Latin language, indeed, in which all legal instruments were drawn up, and of which all ecclesiastics availed themselves in their epistolary intercourse, as well as in their more solemn proceedings, had never ceased to be familiar. Though many solecisms and barbarous words occur in the writings of what were called learned men, they possessed a fluency of expression in Latin which does not often occur at present. During the dark ages, however, properly so called, or the period from the sixth to the eleventh century, we chiefly meet with quotations from the Vulgate or from theological writers. Nevertheless, quotations from the Latin poets are hardly to be called unusual. Virgil, Ovid, Statius, and Horace are brought forward by those who aspire to some literary reputation, especially during the better periods of that long twilight, the reigns of Charlemagne and his son in France, part of the tenth century in Germany, and the eleventh in both. The prose writers of Rome are not so familiar, but in quotations we are apt to find the poets preferred; and it is certain that a few could be named who were not ignorant of Cicero, Sallust, and Livy. A considerable change took place in the course of the twelfth century. The polite literature, as well as the abstruser science of antiquity, became the subject of cultivation. Several writers of that age, in different parts of Europe, are distinguished more or less for elegance, though not absolute purity of Latin style, and for their acquaintance with those ancients, who are its principal models. Such were John of Salisbury, the acute and learned author of the "Polycraticon," William of Malmesbury, Giraldus Cambrensis, Roger Hoveden, in England; and in foreign countries, Otho of Frisingen, Saxo Grammaticus, and the best perhaps of all I have named as to style, Falcandus, the historian of Sicily. In these we meet with frequent quotations from Livy, Cicero, Pliny, and

other considerable writers of antiquity. The poets were now admired and even imitated. All metrical Latin before the latter part of the twelfth century, so far as I have seen, is of little value; but at this time, and early in the succeeding age, there appeared several versifiers who aspired to the renown of following the steps of Virgil and Statius in epic poetry. Joseph Iscanus, an Englishman, seems to have been the earliest of these; his poem on the Trojan war containing an address to Henry II. He wrote another, entitled "Antiocheis," on the third crusade, most of which has perished. The wars of Frederick Barbarossa were celebrated by Gunther in his "Ligurinus"; and not long afterward Guillelmus Brito wrote the "Philippis," in honour of Philip Augustus, and Walter de Chatillon the "Alexandreis," taken from the popular romance of Alexander. None of these poems, I believe, have much intrinsic merit; but their existence is a proof of taste that could relish, though not of genius that could emulate antiquity.[419]

In the thirteenth century there seems to have been some decline of classical literature, in consequence probably of the scholastic philosophy, which was then in its greatest vigour; at least we do not find so many good writers as in the preceding age. But about the middle of the fourteenth, or perhaps a little sooner, an ardent zeal for the restoration of ancient learning began to display itself. The copying of books, for some ages slowly and sparingly performed in monasteries, had already become a branch of trade,[420] and their price was consequently reduced. Tiraboschi denies that the invention of making paper from linen rags is older than the middle of that century; and although doubts may be justly entertained as to the accuracy of this position, yet the confidence with which so eminent a scholar

[419] Warton's "Hist. of English Poetry," vol. i. Dissertation II. Roquefort, "État de la Poésie Française du douzième Siècle," p. 18. The following lines from the beginning of the eighth book of the Philippis seem a fair, or rather a favourable, specimen of these epics. But I am very superficially acquainted with any of them:

"Solverat interea zephyris melioribus annum
Frigore depulso veris tepor, et renovari
Cœperat et viridi gremio juvenescere tellus;
Cum Rea læta Jovis rideret ad oscula mater,
Cum jam post tergum Phryxi vectore relicto
Solis Agenorei premeret rota terga juvenci."

The tragedy of Eccerinus ("Eccelin da Romano"), by Albertinus Mussatus, a Paduan, and author of a respectable history, deserves some attention, as the first attempt to revive the regular tragedy. It was written soon after 1300. The language by no means wants animation, notwithstanding an unskilful conduct of the fable. The Eccerinus is printed in the tenth volume of Muratori's collection.

[420] Booksellers appear in the latter part of the twelfth century. Peter of Blois mentions a law book which he had procured a quodam publico mangone librorum. ("Hist. Littéraire de la France," tome ix, p. 84.) In the thirteenth century there were many copyists by occupation in the Italian universities. (Tiraboschi, tome iv, p. 72.) The number of these at Milan before the end of that age is said to have been fifty. (Ibid.) But a very small proportion of their labour could have been devoted to purposes merely literary. By a variety of ordinances, the first of which bears date in 1275, the booksellers of Paris were subjected to the control of the university. (Crevier, tome ii, pp. 67, 286. The pretext of this was, lest erroneous copies should obtain circulation. And this appears to have been the original of those restraints upon the freedom of publication, which since the in-

advances it is at least a proof that paper manuscripts of an earlier date are very rare.[421] Princes became far more attentive to literature when it was no longer confined to metaphysical theology and canon law. I have already mentioned the translations from classical authors, made by command of John and Charles V of France.[422] These French translations diffused some acquaintance with ancient history and learning among our own countrymen. The public libraries assumed a more respectable appearance. Louis IX had formed one at Paris, in which it does not appear that any work of elegant literature was found.[423] At the beginning of the fourteenth century only four classical manuscripts existed in this collection: of Cicero, Ovid, Lucan, and Boethius.[424] The academical library of Oxford, in 1300, consisted of a few tracts kept in chests under St. Mary's Church. That of Glastonbury Abbey, in 1240, contained four hundred volumes, among which were Livy, Sallust, Lucan, Virgil, Claudian, and other ancient writers.[425] But no other, probably, of that age was so numerous or so valuable. Richard of Bury, Chancellor of England, and Edward III spared no expense in collecting a library, the first perhaps that any private man had formed. But the scarcity of valuable books was still so great that he gave the Abbot of St. Albans fifty pounds' weight of silver for between thirty and forty volumes.[426] Charles V increased

vention of printing have so much retarded the diffusion of truth by means of that great instrument.

[421] Tiraboschi, tome v, p. 85. On the contrary side are Montfaucon, Mabillon, and Muratori; the latter of whom carries up the invention of our ordinary paper to the year 1000. But Tiraboschi contends that the paper used in manuscripts of so early an age was made from cotton rags, and, apparently from the inferior durability of that material, not frequently employed. The editors of "Nouveau Traité de Diplomatique" are of the same opinion, and doubt the use of linen paper before the year 1300. (Tome i, pp. 517, 521.) Meerman, well known as a writer upon the antiquities of printing, offered a reward for the earliest manuscript upon linen paper, and, in a treatise upon the subject, fixed the date of its invention between 1270 and 1300. But M. Schwandner, of Vienna, is said to have found in the Imperial Library a small charter bearing the date of 1243 on such paper. (Macpherson's "Annals of Commerce," vol. i, p. 394.) Tiraboschi, if he had known this, would probably have maintained the paper to be made of cotton, which he says it is difficult to distinguish. He assigns the invention of linen paper to Pace da Fabiano, of Treviso. But more than one Arabian writer asserts the manufacture of linen paper to have been carried on at Samarcand early in the eighth century, having been brought thither from China. And what is more conclusive, Casiri positively declares many manuscripts in the Escurial of the eleventh and twelfth centuries to be written on that substance. ("Bibliotheca Arabico-Hispanica," tome ii, p. 9.) This authority appears much to outweigh the opinion of Tiraboschi in favour of Pace da Fabiano, who must perhaps take his place at the table of fabulous heroes with Bartholomew Schwartz and Flavio Gioja. But the material point, that paper was very little known in Europe till the latter part of the fourteenth century, remains as before. (See "Introduction to History of Literature," c. i, § 58.)

[422] Warton's "Hist. of English Poetry," vol. ii, p. 122.

[423] Velly, tome v, p. 202; Crevier, tome ii, p. 36.

[424] Warton, vol. i; Dissert. II.

[425] Ibid.

[426] Warton, vol. i. Dissert. II. Fifty-eight books were transcribed in this abbey under one abbot, about the year 1300. Every considerable monastery had a room, called Scriptorium, where this work was performed. More than eighty were transcribed at St. Albans under Whethamstede, in the time of Henry VI. ibid. See also Du Cange, "V Scriptores." Nevertheless we must remember, first, that the far greater part of these books were mere monastic trash, or at least useless in our modern apprehension; secondly, that it depended upon the character of the abbot whether the scriptorium should be occupied or not. Every

the Royal Library at Paris to nine hundred volumes, which the Duke of Bedford purchased and transported to London.[427] His brother Humphrey, Duke of Gloucester, presented the University of Oxford with six hundred books, which seem to have been of extraordinary value, one hundred and twenty of them having been estimated at one thousand pounds. This, indeed, was in 1440, at which time such a library would not have been thought remarkably numerous beyond the Alps,[428] but England had made comparatively little progress in learning. Germany, however, was probably still less advanced. Louis, Elector Palatine, bequeathed in 1421 his library to the University of Heidelberg, consisting of one hundred and fifty-two volumes. Eighty-nine of these related to theology, twelve to canon and civil law, forty-five to medicine, and six to philosophy.[429]

Those who first undertook to lay open the stores of ancient learning found incredible difficulties from the scarcity of manuscripts. So gross and supine was the ignorance of the monks, within whose walls these treasures were concealed, that it was impossible to ascertain, except by indefatigable researches, the extent of what had been saved out of the great shipwreck of antiquity. To this inquiry Petrarch devoted continual attention. He spared no means to preserve the remains of authors, who were perishing from neglect and time. This danger was by no means past in the fourteenth century. A treatise of Cicero upon "Glory," which had been in his possession, was afterward irretrievably lost.[430] He declares that he had seen in his youth the works of Varro; but all his endeavours to recover these and the second "Decad" of Livy were fruitless. He found, however, Quintilian, in 1350, of which there was no copy in Italy.[431] Boccaccio, and a man of less general fame, Colluccio Salutato, were distinguished in the same honourable task. The diligence of these scholars was not confined to searching for manuscripts. Transcribed by slovenly monks, or by ignorant persons who made copies for sale, they required the continual emendation of accurate critics.[432] Though much certainly was left for the more

head of a monastery was not a Whethamstede. Ignorance and jollity, such as we find in Bolton Abbey, were their more usual characteristics. By the account books of this rich monastery, about the beginning of the fourteenth century, three books only appear to have been purchased in forty years. One of those was the "Liber Sententiarum" of Peter Lombard, which cost thirty shillings, equivalent to near forty pounds at present. (Whitaker's "Hist. of Craven," p. 330.)

[427] Ibid.; Villaret, tome xi, p. 17.

[428] Niccolo Niccoli, a private scholar, who contributed essentially to the restoration of ancient learning, bequeathed a library of eight hundred volumes to the republic of Florence. This Niccoli hardly published anything of his own; but earned a well-merited reputation by copying and correcting manuscripts. (Tiraboschi, tome vi, p. 114; Shepherd's "Poggio," p. 319.) In the preceding century Colluccio Salutato had procured as many as eight hundred volumes. (Ibid., p. 23; Roscoe's "Lorenzo de' Medici," p. 55.)

[429] Schmidt, "Hist. des Allemands," tome v, p. 520.

[430] He had lent it to a needy man of letters, who pawned the book, which was never recovered. (De Sade, tome i, p. 57.)

[431] Tiraboschi, p. 89.

[432] Idem., tome v, p. 83; De Sade, tome i, p. 88.

enlightened sagacity of later times, we owe the first intelligible text of the Latin classics to Petrarch, Poggio, and their contemporary labourers in this vineyard for a hundred years before the invention of printing.

What Petrarch began in the fourteenth century was carried on by a new generation with unabating industry. The whole lives of Italian scholars in the fifteenth century were devoted to the recovery of manuscripts and the revival of philology. For this they sacrificed their native language, which had made such surprising shoots in the preceding age, and were content to trace, in humble reverence, the footsteps of antiquity. For this, too, they lost the hope of permanent glory, which can never remain with imitators, or such as trim the lamp of ancient sepulchres. No writer, perhaps, of the fifteenth century, except Politian, can aspire at present even to the second class, in a just marshalling of literary reputation. But we owe them our respect and gratitude for their taste and diligence. The discovery of an unknown manuscript, says Tiraboschi, was regarded almost as the conquest of a kingdom. The classical writers, he adds, were chiefly either found in Italy, or at least by Italians; they were first amended and first printed in Italy, and in Italy they were first collected in public libraries.[433] This is subject to some exception when fairly considered; several ancient authors were never lost, and therefore can not be said to have been discovered, and we know that Italy did not always anticipate other countries in classical printing. But her superior merit is incontestable. Poggio Bracciolini, who stands perhaps at the head of the restorers of learning, in the earlier part of the fifteenth century, discovered in the monastery of St. Gall, among dirt and rubbish in a dungeon scarcely fit for condemned criminals, as he describes it, an entire copy of Quintilian and part of Valerius Flaccus. This was in 1414; and soon afterward he rescued the poem of "Silius Italicus," and twelve comedies of Plautus, in addition to eight that were previously known, besides Lucretius, Columella, Tertullian, Ammianus Marcellinus, and other writers of inferior note.[434] A Bishop of Lodi brought to light the rhetorical treatises of Cicero. Not that we must suppose these books to have been universally unknown before; Quintilian, at least, is quoted by English writers much earlier. But so little intercourse prevailed among different countries, and the monks had so little acquaintance with the riches of their conventual libraries, that an author might pass for lost in Italy who was familiar to a few learned men in other parts of Europe. To the name of Poggio we may add a number of others, distinguished in this memorable resurrection of ancient

[433] Tiraboschi, p. 101.
[434] Tiraboschi, tome vi, p. 104; and Shepherd's "Life of Poggio," pp. 106, 110; Roscoe's "Lorenzo de' Medici," p. 38.

literature, and united, not always indeed by friendship, for their bitter animosities disgrace their profession, but by a sort of common sympathy in the cause of learning: Filelfo, Laurentius Valla, Niccolo Niccoli, Ambrogio Traversari, more commonly called Il Camaldolense, and Leonardo Aretino.

From the subversion of the Western Empire, or at least from the time when Rome ceased to pay obedience to the exarchs of Ravenna, the Greek language and literature had been almost entirely forgotten within the pale of the Latin Church. A very few exceptions might be found, especially in the earlier period of the middle ages, while the Eastern emperors retained their dominion over part of Italy.[435] Thus Charlemagne is said to have established a school for Greek at Osnaburg.[436] John Scotus seems to have been well acquainted with the language. And Greek characters may occasionally, though very seldom, be found in the writings of learned men, such as Lanfranc or William of Malmesbury.[437] It is said that Roger Bacon understood Greek; and that his eminent contemporary, Robert Grostete, Bishop of Lincoln, had a sufficient intimacy with it to translate a part of Suidas. Since Greek was spoken with considerable purity by the noble and well-educated natives of Constantinople, we may wonder that, even as a living language, it was not better known by the Western nations, and especially in so neighbouring a nation as Italy. Yet here the ignorance was perhaps even more complete than in France or England. In some parts, in-

[435] Schmidt, "Hist. des Allemands," tome ii, p. 374; Tiraboschi, tome iii, p. 124, et alibi. Bede extols Theodore Primate of Canterbury, and Tobias Bishop of Rochester, for their knowledge of Greek. ("Hist. Eccles.," c. 9 and 24.) But the former of these prelates, if not the latter, was a native of Greece.

[436] "Hist. Littéraire de la France," tome iv, p. 12.

[437] Greek characters are found in a charter of 943, published in Martenne, "Thesaurus Anecdot.," tome i, p. 74. The title of a treatise περὶ φύσεων μερίσμου, and the word θεοτόκος, occur in William of Malmesbury, and one or two others in Lanfranc's "Constitutions." It is said that a Greek psalter was written in an abbey at Tournay about 1105. ("Hist. Litt. de la France," tome ix, p. 102.) This was, I should think, a very rare instance of a Greek manuscript, sacred or profane, copied in the western parts of Europe before the fifteenth century. But a Greek psalter written in Latin characters at Milan in the ninth century was sold some years ago in London. John of Salisbury is said by Crevier to have known a little Greek, and he several times uses technical words in that language. Yet he could not have been much more learned than his neighbours, since, having found the word οὐσία in St. Ambrose, he was forced to ask the meaning of one John Sarasin, an Englishman, because, says he, none of our masters here (at Paris) understand Greek. Paris, indeed, Crevier thinks, could not furnish any Greek scholar in that age except Abélard and Héloïse, and probably neither of them knew much. ("Hist. de l'Univers. de Paris," tome i, p. 259.)

The ecclesiastical language, it may be observed, was full of Greek words Latinized. But this process had taken place before the fifth century; and most of them will be found in the Latin dictionaries. A Greek word was now and then borrowed, as more imposing than the correspondent Latin. Thus the English and other kings sometimes called themselves Basileus, instead of Rex.

It will not be supposed that I have professed to enumerate all the persons of whose acquaintance with the Greek tongue some evidence may be found; nor have I ever directed my attention to the subject with that view. Doubtless the list might be more than doubled. But, if ten times the number could be found, we should still be entitled to say that the language was almost unknown, and that it could have had no influence on the condition of literature. [See "Introduction to Hist. of Literature," cap. 2, § 7.]

deed, of Calabria, which had been subject to the Eastern Empire till near the year 1100, the liturgy was still performed in Greek; and a considerable acquaintance with the language was, of course, preserved. But for the scholars of Italy, Boccaccio positively asserts, that no one understood so much as the Greek characters.[438] Nor is there probably a single line quoted from any poet in that language from the sixth to the fourteenth century.

The first to lead the way in restoring Grecian learning in Europe were the same men who had revived the kindred Muses of Latium, Petrarch and Boccaccio. Barlaam, a Calabrian by birth, during an embassy from the court of Constantinople in 1335, was persuaded to become the preceptor of the former, with whom he read the works of Plato.[439] Leontius Pilatus, a native of Thessalonica, was encouraged some years afterward by Boccaccio to give public lectures upon Homer at Florence.[440] Whatever might be the share of general attention that he excited, he had the honour of instructing both these great Italians in his native language. Neither of them perhaps reached an advanced degree of proficiency; but they bathed their lips in the fountain, and enjoyed the pride of being the first who paid the homage of a new posterity to the father of poetry. For some time little fruit apparently resulted from their example; but Italy had imbibed the desire of acquisitions in a new sphere of knowledge, which, after some interval, she was abundantly able to realize. A few years before the termination of the fourteenth century, Emanuel Chrysoloras, whom the Emperor John Palæologus had previously sent into Italy, and even as far as England, upon one of those unavailing embassies, by which the Byzantine court strove to obtain sympathy and succour from Europe, returned to Florence as a public teacher of Grecian literature.[441] His school was afterward removed successively to Pavia, Venice, and Rome; and during nearly twenty years that he taught in Italy, most of those eminent scholars whom I have already named, and who distinguish the first half of that century, derived from his instruction their knowledge of the Greek tongue. Some, not content with being the disciples of Chrysoloras, betook themselves to the source of that literature at Constantinople; and returned to Italy, not only with a more accurate insight into the Greek idiom than they could have attained at home, but with

[438] Nemo est qui Græcas literas nôrit; at ego in hoc Latinitati compatior, quæ sic omnino Græca abjecit studia, ut etiam non noscamus characteres literarum. ("Genealogiæ Deorum, apud Hodium de Græcis Illustribus," p. 3.)

[439] "Mém. de Pétrarque," tome i, p. 407.

[440] "Mém. de Pétrarque," tome i, p. 447; tome iii, p. 634. "Hody de Græcis Illust.," p. 2. Boccaccio speaks modestly of his own attainments in Greek: etsi non satis plenè perteperim, percepi tamen quantum potui; nec dubium, si permansisset homo ille vagus diutius penes nos, quin plenius percepissem (id., p. 4).

[441] Hody places the commencement of Chrysoloras's teaching as early as 1391, p. 3. But Tiraboschi, whose research was more precise, fixes it at the end of 1396 or beginning of 1397 (tome vii, p. 126).

copious treasures of manuscripts, few, if any, of which probably existed previously in Italy, where none had ability to read or value them; so that the principal authors of Grecian antiquity may be considered as brought to light by these inquirers, the most celebrated of whom are Guarino of Verona, Aurispa, and Filelfo. The second of these brought home to Venice, in 1423, not less than two hundred and thirty-eight volumes.[442]

The fall of that Eastern Empire, which had so long outlived all other pretensions to respect that it scarcely retained that founded upon its antiquity, seems to have been providentially delayed till Italy was ripe to nourish the scattered seeds of literature that would have perished a few ages earlier in the common catastrophe. From the commencement of the fifteenth century even the national pride of Greece could not blind her to the signs of approaching ruin. It was no longer possible to inspire the European republic, distracted by wars and restrained by calculating policy, with the generous fanaticism of the crusades; and at the Council of Florence, in 1439, the court and church of Constantinople had the mortification of sacrificing their long-cherished faith, without experiencing any sensible return of protection or security. The learned Greeks were perhaps the first to anticipate, and certainly not the last to avoid, their country's destruction. The Council of Florence brought many of them into Italian connections, and held out at least a temporary accommodation of their conflicting opinions. Though the Roman pontiffs did nothing, and probably could have done nothing effectual, for the empire of Constantinople, they were very ready to protect and reward the learning of individuals. To Eugenius IV, to Nicholas V, to Pius II, and some other popes of this age, the Greek exiles were indebted for a patronage which they repaid by splendid services in the restoration of their native literature throughout Italy. Bessarion, a disputant on the Greek side in the Council of Florence, was well content to renounce the doctrine of single procession for a cardinal's hat—a dignity which he deserved for his learning, if not for his pliancy. Theodore Gaza, George of Trebizond, and Gemistus Pletho, might equal Bessarion in merit, though not in honours. They all, however, experienced the patronage of those admirable protectors of letters, Nicholas V, Cosmo de' Medici, or Alfonso, King of Naples. These men emigrated before the final destruction of the Greek Empire; Lascaris and Musurus, whose arrival in Italy was posterior to that event, may be deemed perhaps still more conspicuous; but as the study of the Greek language was already restored, it is unnecessary to pursue the subject any further.

The Greeks had preserved, through the course of the middle

[442] Tiraboschi, tome vi, p. 102; Roscoe's "Lorenzo de' Medici," vol. i, p. 43.

ages, their share of ancient learning with more fidelity and attention than was shown in the west of Europe. Genius indeed, or any original excellence, could not well exist along with their cowardly despotism, and their contemptible theology, more corrupted by frivolous subtleties than that of the Latin Church. The spirit of persecution, naturally allied to despotism and bigotry, had nearly, during one period, extinguished the lamp, or at least reduced the Greeks to a level with the most ignorant nations of the West. In the age of Justinian, who expelled the last Platonic philosophers, learning began rapidly to decline; in that of Heraclius it had reached a much lower point of degradation; and for two centuries, especially while the worshippers of images were persecuted with unrelenting intolerance, there is almost a blank in the annals of Grecian literature.[443] But about the middle of the ninth century it revived pretty suddenly, and with considerable success.[444] Though, as I have observed, we find in very few instances any original talent, yet it was hardly less important to have had compilers of such erudition as Photius, Suidas, Eustathius, and Tzetzes. With these certainly the Latins of the middle ages could not place any names in comparison. They possessed, to an extent which we can not precisely appreciate, many of those poets, historians, and orators of ancient Greece, whose loss we have long regretted and must continue to deem irretrievable. Great havoc, however, was made in the libraries of Constantinople at its capture by the Latins—an epoch from which a rapid decline is to be traced in the literature of the Eastern Empire. Solecisms and barbarous terms, which sometimes occur in the old Byzantine writers, are said to deform the style of the fourteenth and fifteenth centuries.[445] The

[443] The authors most conversant with Byzantine learning agree in this. Nevertheless, there is one manifest difference between the Greek writers of the worst period, such as the eighth century, and those who correspond to them in the West. Syncellus, for example, is of great use in chronology, because he was acquainted with many ancient histories now no more. But Bede possessed nothing which we have lost, and his compilations are consequently altogether unprofitable. The eighth century, the Sæculum Iconoclasticum of Cave, low as it was in all polite literature, produced one man, John Damascenus, who has been deemed the founder of scholastic theology, and who at least set the example of that style of reasoning in the East. This person, and Michael Psellus, a philosopher of the eleventh century, are the only considerable men, as original writers, in the annals of Byzantine literature.

[444] The honour of restoring ancient or heathen literature is due to the Cæsar Bardas, uncle and minister of Michael II. Cedrenus speaks of it in the following terms: ἐπεμελήθη δὲ καὶ τῆς ἔξω σοφίας (ἦν γὰρ ἐκ πόλλου χρόνου παραῤῥυεῖσα, καὶ πρὸς τῇ μηδὲν ὅλως χωρήσασα τῇ τῶν κρατούντων ἀργίᾳ καὶ ἀμαθίᾳ), διατρίβας ἑκάστῃ τῶν ἐπιστήμων ἀφορισὰς, τῶν μὲν ἄλλων ὅπῃ περ ἔτυχε, τῆς δ' ἐπὶ πασῶν ἐπόχου φιλοσοφίας κατ' αὐτὰ τὰ βασίλεια ἐν τῇ Μαγναύρῳ καὶ οὕτω ἐξ ἐκείνου ἀνηβάσκειν αἱ ἐπιστημαὶ ἤρξαντο. κ. τ. λ. ("Hist. Byzant. Script." [Lutet.], tome x, p. 547.) Bardas found out and promoted Photius, afterward Patriarch of Constantinople, and equally famous in the annals of the Church and of learning. Gibbon passes perhaps too rapidly over the Byzantine literature, chap. 53. In this, as in many other places, the masterly boldness and precision of his outline, which astonish those who have trodden parts of the same field, are apt to escape an uninformed reader.

[445] Du Cange, "Præfatio ad Glossar. Græcitatis Medii Evi." Anna Comnena quotes some popular lines, which seem to be the earliest specimen extant of the Romaic dialect, or something approaching it, as they observe no grammatical inflection, and bear about the same re-

Turkish ravages and destruction of monasteries ensued; and in the cheerless intervals of immediate terror there was no longer any encouragement to preserve the monuments of an expiring language, and of a name that was to lose its place among nations.[446]

That ardour for the restoration of classical literature which animated Italy in the first part of the fifteenth century was by no means common to the rest of Europe. Neither England, nor France, nor Germany, seemed aware of the approaching change. We are told that learning, by which I believe is only meant the scholastic ontology, had begun to decline at Oxford from the time of Edward III.[447] And the fifteenth century, from whatever cause, is particularly barren of writers in the Latin language. The study of Greek was only introduced by Grocyn and Linacer under Henry VII, and met with violent opposition in the University of Oxford, where the unlearned party styled themselves Trojans, as a pretext for abusing and insulting the scholars.[448] Nor did any classical work proceed from the re-

semblance to ancient Greek that the worst law-charters of the ninth and tenth centuries do to pure Latin. In fact, the Greek language seems to have declined much in the same manner as the Latin did, and almost at as early a period. In the sixth century, Damascius, a Platonic philosopher, mentions the old language as distinct from that which was vernacular, *τὴν ἀρχαίαν γλῶτταν ἐντὸς τῆν ἰδιώτην μελετῶσι.* (Du Cange, ibid., p. 11.) It is well known that the popular, or political verses of Tzetzes, a writer of the twelfth century, are accentual—that is, are to be read, as the modern Greeks do, by treating every acute or circumflex syllable as long, without regard to its original quantity. This innovation, which must have produced still greater confusion of metrical rules than it did in Latin, is much older than the age of Tzetzes; if, at least, the editor of some notes subjoined to Meursius's edition of the "Themata" of Constantine Porphyrogenitus (Lugduni, 1617) is right in ascribing certain political verses to that emperor, who died in 959. These verses are regular accentual trochaics. But I believe they have since been given to Constantine Manasses, a writer of the eleventh century.

According to the opinion of a modern traveller (Hobhouse's "Travels in Albania," letter 33), the chief corruptions which distinguish the Romaic from its parent stock, especially the auxiliary verbs, are not older than the capture of Constantinople by Mohammed II. But it seems difficult to obtain any satisfactory proof of this; and the auxiliary verb is so natural and convenient that the ancient Greeks may probably, in some of their local idioms, have fallen into the use of it; as Mr. H. admits they did with respect to the future auxiliary *θέλω*. See some instances of this in Lesbonax, *περὶ σχημάτων*, ad finem Ammonii, curâ Valckenaëri.

[446] Photius (I write on the authority of M. Heeren) quotes Theopompus, Arrian's "History of Alexander's Successors," and of Parthia, Ctesias, Agatharcides, the whole of Diodorus Siculus, Polybius, and Dionysius of Halicarnassus, twenty lost orations of Demosthenes, almost two hundred of Lycias, sixty-four of Isæus, about fifty of Hyperides. Heeren ascribes the loss of these works altogether to the Latin capture of Constantinople, no writer subsequent to that time having quoted them. ("Essai sur les Croisades," p. 413.) It is difficult, however, not to suppose that some part of the destruction was left for the Ottomans to perform. Æneas Sylvius bemoans, in his speech before the Diet of Frankfort, the vast losses of literature by the recent subversion of the Greek empire. Quid de libris dicam, qui illic erant innumerabiles, nondum Latinis cogniti! . . . . . Nunc ergo, et Homero et Pindaro et Menandro et omnibus illustrioribus poetis, secunda mors erit. But nothing can be inferred from this declamation except, perhaps, that he did not know whether Menander still existed or not. ("Æn. Sylv. Opera," p. 715; also p. 881.; Harris's "Philological Inquiries," part iii, c. 4.) It is a remarkable proof, however, of the turn which Europe, and especially Italy, was taking, that a pope's legate should, on a solemn occasion, descant so seriously on the injury sustained by profane literature.

A useful summary of the lower Greek literature, taken chiefly from the "Bibliotheca Græca" of Fabricius, will be found in Berington's "Literary History of the Middle Ages," Appendix I; and one rather more copious in Schoëll, "Abrégé de la Littérature Grècque." (Paris, 1812.)

[447] Wood's "Antiquities of Oxford," vol. i, p. 537.

[448] Roper's "Vita Mori," ed. Hearne, p. 75.

spectable press of Caxton. France, at the beginning of the fifteenth age, had several eminent theologians; but the reigns of Charles VII and Louis XI contributed far more to her political than her literary renown. A Greek professor was first appointed at Paris in 1458, before which time the language had not been publicly taught, and was little understood.[449] Much less had Germany thrown off her ancient rudeness. Æneas Sylvius, indeed, a deliberate flatterer, extols every circumstance in the social state of that country; but Campano, the papal legate at Ratisbon in 1471, exclaims against the barbarism of a nation, where very few possessed any learning, none any elegance.[450] Yet the progress of intellectual cultivation, at least in the two former countries, was uniform, though silent; libraries became more numerous, and books, after the happy invention of paper, though still very scarce, might be copied at less expense. Many colleges were founded in the English as well as foreign universities during the fourteenth and fifteenth centuries. Nor can I pass over institutions that have so eminently contributed to the literary reputation of this country, and that still continue to exercise so conspicuous an influence over her taste and knowledge, as the two great schools of grammatical learning, Winchester and Eton—the one founded by William of Wykeham, Bishop of Winchester, in 1373; the other in 1432, by King Henry VI.[451]

But while the learned of Italy were eagerly exploring their recent acquisitions of manuscripts, deciphered with difficulty and slowly circulated from hand to hand, a few obscure Germans had gradually perfected the most important discovery recorded in the annals of mankind. The invention of printing, so far from being the result of philosophical sagacity, does not appear to have been suggested by any regard to the higher branches of literature, or to bear any other relation than that of coincidence to their revival in Italy. The question why it was struck out at that particular time must be referred to that disposition of unknown causes which we call accident. Two or three centuries earlier, we can not but acknowledge the discovery would have

[449] Crevier, tome iv, p. 243; see too p. 46.

[450] Incredibilis ingeniorum barbaries est; rarissimi literas nôrunt, nulli elegantiam. ("Papiensis Epistolæ," p. 377.) Campano's notion of elegance was ridiculous enough. Nobody ever carried further the pedantic affectation of avoiding modern terms in his Latinity. Thus, in the life of Braccio da Montone, he renders his meaning almost unintelligible by excess of classical purity. Braccio boasts se numquam deorum immortalium templa violâsse. Troops committing outrages in a city are accused virgines vestales incestâsse. In the terms of treaties he employs the old Roman forms: exercitum trajicito—oppida pontificis sunto, etc. And with a most absurd pedantry, the ecclesiastical state is called Romanum imperium. ("Campani Vita Braccii," in Muratori "Script. Rer. Ital.," tome xix.)

[451] A letter from Master William Paston at Eton ("Paston Letters," vol. i, p. 299) proves that Latin versification was taught there as early as the beginning of Edward IV's reign. It is true that the specimen he rather proudly exhibits does not much differ from what we denominate nonsense verses. But a more material observation is that the sons of country gentlemen living at a considerable distance were already sent to public schools for grammatical education.

been almost equally acceptable. But the invention of paper seems to have naturally preceded those of engraving and printing. It is generally agreed that playing cards, which have been traced far back in the fourteenth century, gave the first notion of taking off impressions from engraved figures upon wood. The second stage, or rather second application of this art, was the representation of saints and other religious devices, several instances of which are still extant. Some of these are accompanied with an entire page of illustrative text, cut into the same wooden block. This process is indeed far removed from the invention that has given immortality to the names of Fust, Schöffer, and Gutenberg, yet it probably led to the consideration of means whereby it might be rendered less operose and inconvenient. Whether movable wooden characters were ever employed in any entire work is very questionable—the opinion that referred their use to Laurence Coster, of Haarlem, not having stood the test of more accurate investigation. They appear, however, in the capital letters of some early printed books. But no expedient of this kind could have fulfilled the great purposes of this invention, until it was perfected by founding metal types in a matrix or mould, the essential characteristic of printing, as distinguished from other arts that bear some analogy to it.

The first book that issued from the presses of Fust and his associates at Mentz was an edition of the Vulgate, commonly called the Mazarine Bible, a copy having been discovered in the library that owes its name to Cardinal Mazarin at Paris. This is supposed to have been printed between the years 1450 and 1455.[452] In 1457 an edition of the Psalter appeared, and in this the invention was announced to the world in a boasting colophon, though certainly not unreasonably bold.[453] Another edition of the Psalter, one of an ecclesiastical book, Durand's account of liturgical offices, one of the constitutions of Pope Clement V, and one of a popular treatise on general science, called the "Catholicon," filled up the interval till 1462, when the second Mentz Bible proceeded from the same printers.[454] This, in the opinion of some, is the earliest book in which cast types were employed, those of the Mazarine Bible having been cut with the hand. But this is a controverted point. In 1465 Fust and Schöffer published an edition of Cicero's "Offices," the first tribute of the new art to polite literature. Two pupils of their school, Sweynheim and Pannartz, migrated the same year into Italy, and printed Donatus's grammar and the works of Lactantius at the monastery of Subiaco, in the neighbourhood of

[452] De Bure, tome i, p. 30. Several copies of this book have come to light since its discovery.

[453] Id., p. 71.

[454] "Mém. de l'Acad. des Inscriptions," tome xiv, p. 265. Another edition of the Bible is supposed to have been printed by Pfister at Bamberg in 1459.

Rome.[455] Venice had the honour of extending her patronage to John of Spira, the first who applied the art on an extensive scale to the publication of classical writers.[456] Several Latin authors came forth from his press in 1470, and during the next ten years a multitude of editions were published in various parts of Italy. Though, as we may judge from their present scarcity, these editions were by no means numerous in respect of impressions, yet, contrasted with the dilatory process of copying manuscripts, they were like a new mechanical power in machinery, and gave a wonderfully accelerated impulse to the intellectual cultivation of mankind. From the era of these first editions proceeding from the Spiras, Zarot, Janson, or Sweynheim and Pannartz, literature must be deemed to have altogether revived in Italy. The sun was now fully above the horizon, though countries less fortunately circumstanced did not immediately catch his beams; and the restoration of ancient learning in France and England can not be considered as by any means effectual even at the expiration of the fifteenth century. At this point, however, I close the present chapter. The last twenty years of the middle ages, according to the date which I have fixed for their termination in treating of political history, might well invite me by their brilliancy to dwell upon that golden morning of Italian literature. But, in the history of letters, they rather appertain to the modern than the middle period; nor would it become me to trespass upon the exhausted patience of my readers by repeating what has been so often and so recently told, the story of art and learning, that has employed the comprehensive research of a Tiraboschi, a Ginguené, and a Roscoe.

[455] Tiraboschi, tome vi, p. 140.

[456] Sanuto mentions an order of the Senate in 1469, that John of Spira should print the epistles of Tully and Pliny for five years, and that no one else should do so. ("Script. Rerum Italic.," tome xxii, p. 1189.)

NOTES

CHAPTER I

I, page 2.—The evidence of Zosimus, which is the basis of this theory of Dubos, can not be called very slight. Early in the fifth century, according to him, about the time when Constantine usurped the throne of Britain and Gaul, or, as the sense shows, a little later, in consequence of the incursions of the barbarians from beyond the Rhine, the natives of Britain, taking up arms for themselves, rescued their cities from these barbarians; and the whole Armorican territory, and other provinces of Gaul, ὁ Ἀρμόριχος ἅπας, καὶ ἕτεραι Γαλατῶν ἐπαρχίαι, in imitation of the Britons, liberated themselves in the same manner, expelling the Roman rulers, and establishing an internal government: ἐκβάλλουσαι μὲν τοὺς Ῥωμαίους ἄρχοντας, οἰκεῖον δὲ κατ' ἐξουσίαν πολίτευμα καθιστᾶσαι. (Lib. vi, c. 5.) Guizot gives so much authority to this as to say of the Armoricans, "Ils se maintinrent toujours libres, entre les barbares et les Romains." (Introduction à la "Collection des Mémoires," vol i, p. 336.) Sismondi pays little regard to it. The proofs alleged by Daru for the existence of a king of Brittany named Conan, early in the fifth century, would throw much doubt on the Armorican republic; but they seem to me rather weak. Brittany, it may be observed by the way, was never subject to the Merovingian kings, except sometimes in name. Dubos does not think it probable that there was any central authority in what he calls the Armorican confederacy, but conceives the cities to have acted as independent states during the greater part of the fifth century. ("Hist. de l'Établissement," etc., vol. i, p. 338.) He gives, however, an enormous extent to Armorica, supposing it to have comprised Aquitaine. But, though the contrary has been proved, it is to be observed that Zosimus mentions other provinces of Gaul, ἕτεραι Γαλατῶν ἐπαρχίαι, as well as Armorica. Procopius, by the word Ἀρβόρυχοι, seems to indicate all the inhabitants at least of northern Gaul; but the passage is so ambiguous, and his acquaintance with that history so questionable, that little can be inferred from it with any confidence. On the whole, the history of northern Gaul in the fifth century is extremely obscure, and the trustworthy evidence very scanty.

Sismondi ("Hist. des Français," vol. i, p. 134) has a good passage, which it will be desirable to keep in mind when we launch into mediæval antiquities: "Ce peu des mots a donné matière à d'amples commentaires, et au développement de beaucoup de conjectures ingénieuses. L'abbé Dubos, en expliquant le silence des historiens, a fondé sur des sousentendus une histoire assez complète de la république Armorique. Nous serons souvent appelés à nous tenir en garde contre le zèle des écrivains qui ne satisfait point l'aridité de nos chroniques, et qui y suppléent par des divinations. Plus d'une fois le lecteur pourra être surpris en voyant à combien peu se réduit ce que nous savons réellement sur un événement assez célèbre pour avoir motivé de gros livres."

II, page 2.—The Franks are not among the German tribes mentioned by Tacitus, nor do they appear in history before the year 240. Guizot accedes to the opinion that they were a confederation of the tribes situated between the Rhine, the Weser, and the Main; as the Alemanni were a similar league to the south of the last river.[1] Their origin may be derived from the necessity of defending their independence against Rome; but they had become the aggressors in the period when we read of them in Roman history; and, like other barbarians in that age, were often the purchased allies of the declining empire. Their history is briefly sketched by Guizot ("Essais sur l'Histoire de France," p. 53), and more copiously by other antiquarians, among whom M. Lehuerou, the latest and not the least original or ingenious, conceives them to have been a race of exiles or outlaws from other German tribes, taking the name Franc from frech, fierce or bold,[2] and settling at first, by necessity, near the mouth of the Elbe, whence they moved onward to seek better habitations at the expense of less intrepid though more civilized nations. "Et ainsi naquit la première nation de l'Europe moderne."[3] ("Institutions Mérovingiennes," vol. i, p. 91.)

An earlier writer considers the Franks as a branch of the great stock of the Suevi, mentioned by Tacitus, who, he tells us, "majorem Germaniæ partem obtinent, propriis adhuc nationibus nominibusque discreti, quanquam in communi Suevi dicuntur. Insigne gentis obliquare crinem, nodoque substringere." ("De Moribus German.," c. 38.) Ammianus mentions the Salian

[1] Allemanni is generally supposed to mean "all men." Meyer, however, takes it for another form of Arimanni, from Heermanner, soldiers. ("Nouveaux Mémoires de l'Académie de Bruxelles," vol. iii, p. 439.)

[2] This etymology had been given by Thierry, or was of older origin.

[3] As M. Lehuerou belongs to what is called the Roman school of French antiquaries, he should not have brought the nation from beyond the Rhine.

Franks by name: "Francos eos quos consuetudo Salios appellavit." See a memoir in the "Transactions of the Academy of Brussels," 1824, by M. Devez, "sur l'établissement des Francs dans la Belgique."

In the great battle of Châlons the Franks fought on the Roman side against Attila; and we find them mentioned several times in the history of northern Gaul from that time. Lehuerou ("Institutions Mérovingiennes," c. 11) endeavours to prove, as Dubos had done, that they were settled in Gaul, far beyond Tournay and Cambray, under Meroveus and Childeric, though as subjects of the empire; and Luden conjectures that the whole country between the Moselle and the Somme had fallen into their hands even as early as the reign of Honorius. ("Geschichte des Deutschen Volkes," vol. ii, p. 381.) This is one of the obscure and debated points in early French history. But the seat of the monarchy appears clearly to have been established at Cambray before the middle of the fifth century.

III, page 2.—This theory, which is partly countenanced by Gibbon, has lately been revived, in almost its fullest extent, by a learned and spirited investigator of early history, Sir Francis Palgrave, in his "Rise and Progress of the English Commonwealth," i, 360; and it seems much in favour with M. Raynouard, in his "Histoire du Droit Municipal en France." M. Lehuerou, in a late work ("Histoire des Institutions Mérovingiennes et Carolingiennes," 2 vols., 1843), has in a great measure adopted it: "Nous croyons devoir déclarer que, dans notre opinion, le livre de Dubos, malgré les erreurs trop réelles qui le déparent, et l'esprit de système qui en a considérablement exagéré les conséquences, est, de tous ceux qui ont abordé le même problème au xviiime siècle, celui oú la question des origines Mérovingiennes se trouve le plus près de la véritable solution. Cet aveu nous dispense de détailler plus longuement les obligations que nous lui avons. Elles se révèleront d'ailleurs suffisamment d'ellesmêmes." (Introduction, p. xi.) M. Lehuerou does not, however, follow his celebrated guide so far as to overlook the necessary connection between barbarian force and its aggressive character. The final establishment of the Franks in Gaul, according to him, rested partly on the concession, and consent of the emperors, who had invited them to their service, and rewarded them, as he conceives, with lands, while the progenitors of Clovis bore the royal name, partly on their own encroachments, and especially on the victory of that prince over Syagrius in 486 (vol. i, p. 228).

It may be alleged against Dubos that Clovis advanced into the heart of Gaul as an invader; that he defeated in battle the

lieutenant of the emperor, if Syagrius were such; or, if we chose to consider him as independent, which probably in terms he was not, that the emperors of Constantinople could merely have relinquished their authority, because they had not the strength to enforce it. Gaul, like Britain, in that age, had become almost a sort of derelict possession, to be seized by the occupant; but the title of occupancy is not that of succession. It may be true that the Roman subjects of Clovis paid him a ready allegiance, yet still they had no alternative but to obey.

Twenty-five years elapsed, during which the kingdom of the Salian Franks was prodigiously aggrandized by the submission of all northern Gaul, by the reduction of the Alemanni on the right bank of the Rhine, and by the overthrow of the Visigoths at Vouglé, which brought almost the whole of the south into subjection to Clovis. It is not disputed by any one that he reigned and conquered in his own right. No one has alleged that he founded his great dominion on any other title than that of the sword, which his Frank people alone enabled him to sustain. But about two years before his death, as Gregory of Tours relates, the Emperor Anastasius bestowed upon him the dignity of consul; and this has been eagerly caught at by the school of Dubos as a fact of high importance, and as establishing a positive right of sovereignty, at least over the Romans—that is, the provincial inhabitants of Gaul, which descended to the long line of the Merovingian house. Sir Francis Palgrave, indeed, more strongly than Dubos himself, seems to consider the French monarchy as deriving its pedigree from Rome rather than the Elbe.

The first question that must naturally arise is, as to the value assignable to the evidence of Gregory of Tours respecting the gift of Anastasius. Some might hesitate, at least, to accept the story in all its circumstances. Gregory is neither a contemporary nor, in such a point, an altogether trustworthy witness. His style is verbose and rhetorical; and, even in matters of positive history, scanty as are our means of refuting him, he has sometimes exposed his ignorance, and more often given a tone of improbability to his narrative. An instance of the former occurs in his third book, respecting the death of the widow of Theodoric, contradicted by known history; and for the latter we may refer to the language he puts into the mouth of Clotilda, who urges her husband to the worship of Mars and Mercury, divinities of whom he had never heard.

The main fact, however, that Anastasius conferred the dignity of consul upon Clovis, can not be rejected. Although it has been alleged that his name does not occur in the "Consular Fasti," this seems of no great importance, since the title was merely an honorary distinction, not connecting him with the

empire as its subject. Guizot, indeed, and Sismondi conceive that he was only invested with the consular robe, according to what they take to have been the usage of the Byzantine court. But Gregory, by the words codicillos de consulatu, seems to imply a formal grant. Nor does the fact rest solely on his evidence, though his residence at Tours would put him in possession of the local tradition. Hincmar, the famous Bishop of Rheims, has left a "Life of St. Remy," by whom Clovis was baptized; and, though he wrote in the ninth century, he had seen extracts from a contemporary life of that saint, not then, he says, entirely extant, which life may reasonably be thought to have furnished the substance of the second book of Gregory's history. We find in Hincmar the language of Gregory on the consulship of Clovis, with a little difference of expression: "Cum quibus codicillis etiam illi Anastasius coronam auream cum gemmis, et tunicam blateam misit, et ab eâ die consul et Augustus est appellatus." ("Rec. des Hist.," vol. iii, p. 379.) Now, the words of Gregory are the following: "Igitur ab Anastasio imperatore codicillos de consulatu accepit, et in basilica beati Martini tunica blatea indutus est et clamyde, imponens vertici diadema. Tunc ascenso equite, aurum, argentumque in itinere illo, quod inter portam atrii basilicæ beati Martini et ecclesiam civitatis est, præsentibus populis manu propria spargens, voluntate benignissima erogavit, et ab eâ die tanquam consul aut Augustus est vocitatus." The minuteness of local description implies the tradition of the city of Tours, which Gregory would, of course, know, and renders all scepticism as to the main story very unreasonable. Thus, if we suppose the "Life of St. Remy" to have been the original authority, Anastasius will have sent a crown to Clovis. And this would explain the words of Gregory, "imponens vertici diadema." Such an addition to the dignity of consul is, doubtless, remarkable, and might of itself lead us to infer that the latter was not meant in its usual sense. This passage is in other respects more precise than in Gregory; it has not the indefinite and almost unintelligible words tanquam consul, and has et instead of aut Augustus; which latter conjunction, however, in low Latin, is often put for the former.

But, though the historical evidence is considerably strengthened by the supposition that Gregory copied a "Life of St. Remigius" of nearly contemporary date with the event, we do not find all our difficulty removed so as to render it implicit credence in every particular. That Clovis would be called consul by the provincial Romans after he had received the title from Anastasius is very natural; that he was ever called, even by them, Augustus—that is, emperor—except perhaps in a momentary acclamation, we may not unreasonably scruple to be-

lieve. The imperial title would hardly be assumed by one who pretended only to a local sovereignty; nor is such a usurpation consistent with the theory that the Frank chieftain was on terms of friendship with the court of Constantinople, and in subordination to it. One or other hypothesis must surely be rejected. If Clovis was called emperor (and when did Augustus bear any other meaning?), he was no vicegerent of Anastasius, no consul of the empire. But the most material observations that arise are—first, that the dignity of consul was merely personal, and we have not the slightest evidence that any of the posterity of Clovis either acquired or assumed it; secondly, that the Franks alone were the source of power to the house of Meroveus. "The actual and legal authority of Clovis," says Gibbon, "could not receive any new accession from the consular dignity. It was a name, a shadow, an empty pageant; and, if the conqueror had been instructed to claim the ancient prerogatives of that high office, they must have expired with the period of its annual duration. But the Romans were disposed to revere in the person of their master that antique title which the emperors condescended to assume; the barbarian himself seemed to contract a sacred obligation to respect the majesty of the republic; and the successors of Theodosius, by soliciting his friendship, tacitly forgave and almost ratified the usurpation of Gaul" (chap. xxxviii). It does not appear to me, therefore, very material toward the understanding French history, what was the intention of Anastasius in conferring the name of consul on the King of the Franks. It was a token of amity, no doubt; a pledge, perhaps, that the court of Constantinople renounced the hope of asserting its pretensions to govern a province so irrecoverably separated from it as Gaul; but were it even the absolute cession of a right, which, by the usual law of nations, required something far more explicit, it would not affect in any degree the real authority which Clovis had won by the sword, and had exercised for more than twenty years over the unresisting subjects of the Roman Empire.

A different argument for the theory of devolution of power from the Byzantine emperor on the Franks is founded on the cession of Justinian to Theodebert, King of Austrasia, in 540. Provence, which continued in the possession of the emperors for some time after the conquest of Gaul by Clovis, had fallen into the hands of the Ostrogoths, then masters of Italy. The alliance of the Frank king was sought by both parties, at the price of what one enjoyed and the other claimed—Provence, with its wealthy cities of Marseilles and Arles. Theodebert was no very good ally, either to the Greeks or the Goths; but he occupied the territory, and after a few years it was formally ceded to him by Justinian. "That emperor," in the words of Gibbon,

who has not told the history very exactly, "generously yielding to the Franks the sovereignty of the countries beyond the Alps which they already possessed, absolved the provincials from their allegiance, and established, on a more lawful, though not more solid foundation, the throne of the Merovingians." Procopius, in his Greek vanity, pretends that the Franks never thought themselves secure of Gaul until they obtained this sanction from the emperor. "This strong declaration of Procopius," says Gibbon, "would almost suffice to justify the Abbé Dubos." I can not, however, rate the courage of that people so low as to believe that they feared the armies of Justinian, which they had lately put to flight in Italy; nor do I know that a title of sixty years' possession gains much legality by the cession of one who had asserted no claim during that period. Constantinople had tacitly renounced the western provinces of Rome by her inability to maintain them. I must, moreover, express some doubt whether Procopius ever meant to say that Justinian confirmed to the Frank sovereign his rights over the whole of Gaul. He uses, indeed, the word Γαλλίας; but that should, I think, be understood according to the general sense of the passage, which would limit its meaning to Provence, their recent acquisition, and that which the Ostrogoths had already relinquished to them. Gibbon, on the authority of Procopius, goes on to say that the gold coin of the Merovingian kings, "by a singular privilege, which was denied to the Persian monarch, obtained a legal currency in the empire." But this legal currency is not distinctly mentioned by Procopius, though he strangely asserts that it was not lawful, οὐ θέμις, for the King of Persia to coin gold with his own effigy, as if the θέμις of Constantinople were regarded at Seleucia. There is reason to believe that the Goths, as well as Franks, coined gold, which might possibly circulate in the empire, without having, strictly speaking, a legal currency. The expressions of Agathias, quoted above, that the Franks had nearly the same form of government and the same laws as the Romans, may be understood as a mistaken view of what Procopius says in a passage which will be hereafter quoted, and which Agathias, a later writer, perhaps has followed, that the Roman inhabitants of Gaul retained their institutions under the Franks; which was certainly true, though by no means more so than under the Visigoths.

IV, page 5.—It ought, perhaps, to be observed that no period of ecclesiastical history, especially in France, has supplied more saints to the calendar. It is the golden age of hagiology. Thirty French bishops, under Clovis and his sons alone, are venerated in the Roman Church; and not less than seventy-one saints, during the same short period, have supplied some his-

torical information, through their lives in "Acta Sanctorum." "The foundation of half the French churches," says Sismondi, "dates from that epoch" (vol. i, p. 308). Nor was the seventh century much less productive of that harvest. Of the service which the "Lives of the Saints" have rendered to history, as well as of the incredible deficiencies of its ordinary sources, some notion may be gained by the strange fact mentioned in Sismondi, that a King of Austrasia, Dagobert II, was wholly overlooked by historians; and his reign, from 674 to 678, only retrieved by some learned men in the seventeenth century, through the "Life of our Saint Wilfred," who had passed through France on his way to Rome. ("Hist. des Français," vol. ii, p. 51.) But there is a diploma of this prince in "Rec. des Hist.," vol. iv, p. 685.

Sismondi is too severe a censurer of the religious sentiment which actuated the men of this period. It did not prevent crimes, even in those, frequently, who were penetrated by it. But we can not impute to the ascetic superstition of the sixth and seventh centuries, as we may to the persecuting spirit of later ages, that it occasioned them—crimes, at least, which stand forth in history; for to fraud and falsehood it, no question, lent its aid. The "Lives of the Saints," amid all the mass of falsehood and superstition which incrusts them, bear witness not only to an intense piety, which no one will dispute, but to much of charity and mercy toward man. But, even if we should often doubt particular facts from slenderness of proof, they are at least such as the compilers of these legends thought praiseworthy, and such as the readers of them would be encouraged to imitate.[4]

St. Bathilda, of Anglo-Saxon birth, queen of Clovis II, redeeming her countrymen from servitude, to which the barbarous manners of their own people frequently exposed them, is in some measure a set-off against the tyrant princes of the family into which she had come. And many other instances of similar virtue are attested with reasonable probability. Sismondi never fully learned to judge men according to a subjective standard—that is, their own notions of right and wrong—or even to perceive the immediate good consequences of many principles, as well as social institutions connected with them, which we would no more willingly tolerate at present than himself. In this respect Guizot has displayed a more philosophical temper. Still there may be some caution necessary not to carry this subjective estimate of human actions too far, lest we lose sight of their intrinsic quality.

[4] M. Ampère has well observed that it was not the mere interest of the story, nor even the ideal morality, which constituted the principal charm of the legends of saints; it was the constant idea of Providence supporting the faithful in those troublous times, and of saints always interfering in favour of the innocent. ("Hist. Litt. de la France avant le 12mo siècle," ii, 360.)

We have, unfortunately, to set against the saintly legends an enormous mass of better-attested crimes, especially of oppression and cruelty. Perhaps there is hardly any history extending over a century which records so much of this with so little information of any virtue, any public spirit, any wisdom, as the ten books of Gregory of Tours. The seventh century has no historian equally circumstantial, but the tale of the seventh century is in substance the same. The Roman fraud and perfidy mingled, in baleful confluence, with the ferocity and violence of the Frank:

> "Those wild men's vices they received,
> And gave them back their own."

If the Church was deeply tainted with both these classes of crime, it was at least less so, especially with the latter, than the rest of the nation. A saint might have many faults, but it is strongly to be presumed that mankind did not canonize such monsters as the kings and nobles of whom we read almost exclusively in Gregory of Tours. A late writer, actuated by the hatred of antiquity, and especially of kings, nobles, and priests, which is too much the popular creed of France, has collected from age to age every testimony to the wickedness of the powerful. His proofs are one-sided, and, consequently, there is some unfairness in the conclusions; but the facts are, for the most part, irresistibly true. (Dulaure, "Hist. de Paris," passim.)

V, page 5.—The mayor of the palace appears as the first officer of the crown in the three Frank kingdoms during the latter half of the sixth century. He had the command, as Guizot supposes, of the Antrustions, or vassals of the king. Even afterward the office was not, as this writer believes, properly elective, though in the case of a minority of the king, or upon other special occasions, the leudes, or nobles, chose a mayor. The first instance we find of such an election was in 575, when, after the murder of Sigebert by Fredegonde, his son Childebert being an infant, the Austrasian leudes chose Gogon for their mayor. There seem, however, so many instances of elective mayors in the seventh century, that, although the royal consent may probably have been legally requisite, it is hard to doubt that the office had fallen into the hands of the nobles. Thus, in 641: "Flaochatus, genere Francus, major-domûs in regnum Burgundiæ, electione pontificum et cunctorum ducum a Nantechilde regina in hunc gradum honoris nobiliter stabilitur." ("Fredegar. Chron.," c. 89.) And on the election of Ebroin: "Franci in incertum vacillantes, accepto consilio, Ebruinum in hujus honoris curam ac dignitatem statuunt" (c. 92). On the death of Ebroin

in 681: "Franci Warratonem virum illustrem in locum ejus cum jussione regis majorem-domûs palatio constituunt." These two instances were in Neustria; the aristocratic power was still greater in the other parts of the monarchy.

Sismondi adopts a very different theory, clinging a little too much to the democratic visions of Mably. "If we knew better," he says, "the constitution of the monarchy, perhaps we might find that the mayor, like the justiciary of Aragon, was the representative, not of the great, but of the freemen, and taken generally from the second rank in society, charged to repress the excesses of the aristocracy as well as of the crown." ("Hist. des Français," vol. ii, p. 4.) Nothing appears to warrant this vague conjecture, which Guizot wholly rejects, as he does also the derivation of major-domûs from mord-dohmen, a verb signifying to sentence to death, which Sismondi brings forward to sustain his fanciful analogy to the Aragonese justiciary.

The hypothesis, indeed, that the mayor of the palace was chosen out of the common freeholders, and not the highest class, is not only contrary to everything we read of the aristocratical denomination in the Merovingian kingdoms, but to a passage in Fredegarius, to which probably others might be added. Protadius, he informs us, a mayor of Brunehaut's choice, endeavoured to oppress all men of high birth, that no one might be found capable of holding the charge in his room (c. 27). This, indeed, was in the sixth century, before any sort of election was known. But in the seventh the power of the great, and not of the people, meets us at every turn. Mably himself would have owned that his democracy had then ceased to exercise any power.

The Austrasian mayors of the palace were, from the reign of Clotaire II, men of great power, and taken from the house of Pepin of Lamden. They carried forward, ultimately for their own aggrandizement, the aristocratic system which had overturned Brunehaut. Ebroin, on the other hand, in Neustria, must be considered as keeping up the struggle of the royal authority, which he exercised in the name of several phantoms of kings, against the encroachments of the aristocracy, though he could not resist them with final success. Sismondi (vol. ii, p. 64) fancies that Ebroin was a leader of the freemen against the nobles. But he finds a democratic party everywhere; and Guizot justly questions the conjecture ("Collection des Mémoires," vol. ii, p. 320). Sismondi, in consequence of this hypothesis, favours Ebroin; for whom it may be alleged that we have no account of his character but from his enemies, chiefly the biographer of St. Leger. M. Lehuerou sums up his history with apparent justice: "Ainsi périt, après une administration de vingt ans, un homme remarquable à tous égards, mais que le triomphe de

ses ennemis a failli déshériter de sa gloire. Ses violences sont peu douteuses, mais son génie ne l'est pas davantage, et rien ne prouve mieux la terreur qu'il inspirait aux Austrasiens que les injures qu'ils lui ont prodiguées." ("Institutions Carolingiennes," p. 281.)

VI, page 5.—Aribert, or rather Caribert, brother of Dagobert I, was declared King of Aquitaine in 628; but on his death, in 631, it became a duchy dependent on the monarchy under his two sons, with its capital at Toulouse. This dependence, however, appears to have soon ceased, in the decay of the Merovingian line, and for a century afterward Aquitaine can hardly be considered as part of either the Neustrian or Austrasian kingdom. "L'ancienne population Romaine travaillait sans cesse à ressaisir son indépendance. Les Francs avaient conquis, mais ne possédaient vraiment pas ces contrées. Dès que leurs grandes incursions cessaient, les villes et les campagnes se soulevaient, et se confédéraient pour secouer le joug." (Guizot, "Cours d'Hist. Moderne," ii, 229.) This important fact, though acknowledged in passing by most historians, has been largely illustrated in the valuable "Histoire de la Gaule Méridionale," by M. Fauriel.

Aquitaine, in its fullest extent, extended from the Loire beyond the Garonne, with the exception of Touraine and the Orléannois. The people of Aquitaine, in this large sense of the word, were chiefly Romans, with a few Goths. The Franks, as a conquering nation, had scarcely taken up their abode in those provinces. But undoubtedly the Merovingian kings possessed estates in the south of France, which they liberally bestowed as benefices upon their leudes, so that the chief men were frequently of Frank origin. They threw off, nevertheless, their hereditary attachments, and joined with the mass of their new countrymen in striving for the independence of Aquitaine. After the battle of Testry, which subverted the Neustrian monarchy, Aquitaine, and even Burgundy, ceased for a time to be French; under Charles Martel they were styled the Roman countries. (Michelet, ii, 9.)

Eudon, by some called Eudes, grandson of Caribert, a prince of conspicuous qualities, gained ground upon the Franks during the whole period of Pepin Heristal's power, and united to Aquitaine not only Provence, but a new conquest from the independent natives, Gascony. Eudon obtained in 721 a far greater victory over the Saracens than that of Charles Martel at Poitiers. The slaughter was immense, and confessed by the Arabian writers; it even appears that a funeral solemnity, in commemoration of so great a calamity, was observed in Spain for four or five centuries afterward. (Fauriel, iii, 79.) But in its conse-

quences it was far less important; for the Saracens, some years afterward, returned to avenge their countrymen, and Eudon had no resource but in the aid of Charles Martel. After the retreat of the enemy it became the necessary price of the service rendered by the Frank chieftain that Aquitaine acknowledge his sovereignty. This, however, was still but nominal, till Pepin determined to assert it more seriously, and after a long war overcame the last of the ducal line sprung from Clotaire II, which had displayed, for almost a century and a half, an energy in contrast with the imbecility of the elder branch. Even this, as M. Fauriel observes, was little more than a change in the reigning family; the men of Aquitaine never lost their peculiar nationality; they remained a separate people in Gaul, a people distinguished by their character, and by the part which they were called to play in the political revolutions of the age (vol. iii, p. 300).

VII, page 5.—Pepin Heristal was styled Duke of Austrasia, but assumed the mayoralty of Neustria after his great victory at Testry in 687, which humbled for a long time the great rival branch of the monarchy. But he fixed his residence at Cologne, and his family seldom kept their court at Paris. The Franks under Pepin, his son and grandson, "seemed for a second time," says Sismondi, "to have conquered Gaul; it is a new invasion of the language, the military spirit, and the manners of Germany, though only recorded by historians as the victory of the Austrasians over the Neustrians in a civil war. The chiefs of the Carlovingian family called themselves, like their predecessors, Kings of the Franks: they appear as legitimate successors of Clovis and his family; yet all is changed in their spirit and their manners" (vol. ii, p. 170).

This revival of a truly German spirit in the French monarchy had not been sufficiently indicated by the historians of the eighteenth century. It began with the fall of Brunehaut, which annihilated the scheme, not peculiar to herself, but carried on by her with remarkable steadiness, of establishing a despotism analogous to that of the empire. The Roman policy expired with her; Clotaire II and Dagobert I were merely kings of barbarians, exercising what authority they might, but on no settled scheme of absolute power. Their successors were unworthy to be mentioned; though in Neustria, through their mayors of the palace, the royal authority may have been apparently better maintained than in the eastern portion of the kingdom. The kingdoms of Austrasia and Neustria rested on different bases. In the former the Franks were more numerous, less scattered, and, as far as we can perceive, had a more considerable nobility. They had received a less tincture of Roman policy.

They were nearer to the mother-country, which had been, as the earth to Antæus, the source of perpetually recruited vigour. Burgundy, a member latterly of the Neustrian monarchy, had also a powerful aristocracy, but not in so great a degree, probably, of Frank, or even barbarian, descent. The battle of Testry was the second epoch, as the fall of Brunehaut had been the first, in the restoration of a barbaric supremacy to the kingdom of Clovis; and the benefices granted by Charles Martel were the third. It required the interference of the Holy See, in confirming the throne of the younger Pepin, and still more the splendid qualities of Charlemagne, to keep up, even for a time, the royal authority and the dominion of law. It is highly important to keep in our minds this distinction between Austrasia and Neustria, subsisting for some ages, and, in fact, only replaced, speaking without exact geographical precision, by that of Germany and France.

VIII, page 6.—The Merovingian period is so briefly touched in the text as not, I fear, to be very distinctly apprehended by every reader. It may assist the memory to sketch rather a better outline, distributing the period into the following divisions:

I. The reign of Clovis.—The Frank monarchy is established in Gaul; the Romans and Visigoths are subdued; Christianity, in its Catholic form, is as entirely recognised as under the empire; the Franks and Romans, without greatly intermingling, preserve in the main their separate institutions.

II. The reigns of his four sons, till the death of Clotaire I, the survivor, in 561.—A period of great aggrandizement to the monarchy. Burgundy and Provence in Gaul itself, Thuringia, Swabia, and Bavaria, on the other side of the Rhine, are annexed to their dominions, while every crime disgraces the royal line, and in none more than in Clotaire I.

III. A second partition among his four sons ensues: the four kingdoms of Paris, Soissons, Orleans, and Austrasia revive; but a new partition of these is required by the recent conquests, and Gontran of Orleans, without resigning that kingdom, removes his residence to Burgundy. The four kingdoms are reduced to three by the death of Caribert of Paris; one, afterward very celebrated by the name Neustria,[5] between the Scheldt and the Loire, is formed under Chilperic, comprehending those of Paris and Soissons. Caribert of Paris had taken Aquitaine, which

[5] Neustria, or Western France, is first mentioned in a diploma of Childebert, with the date of 558. But the genuineness of this has been denied: the word never occurs in the history of Gregory of Tours, as I find by the index; and M. Lehuerou seems to think that it was not much used till after the death of Brunehaut, in 613.

at his death was divided among the three survivors; Austrasia was the portion of Sigebert. This generation was fruitful of still more crimes than the last, redeemed by no golden glory of conquest. Fredegonde, the wife of Chilperic, diffuses a baleful light over this period. But while she tyrannizes with little control in the west of France, her rival and sister in crime, Brunehaut, wife of Sigebert and mother of Thierry II, his successor, has to encounter a powerful opposition from the Austrasian aristocracy; and in this part of the monarchy a new feature develops itself: the great proprietors, or nobility, act systematically with a view to restrain the royal power. Brunehaut, after many vicissitudes, and after having seen her two sons on the thrones of Austrasia and Burgundy, falls into the hands of Clotaire II, king of the other division, and is sentenced to a cruel death. Clotaire unites the three Frank kingdoms.

IV. Reigns of Clotaire II and his son, Dagobert I.—The royal power, though shaken by the Austrasian aristocracy, is still effective. Dagobert, a prince who seems to have rather excelled most of his family, and to whose munificence several extant monuments of architecture and the arts are referred, endeavours to stem the current. He was the last of the Merovingians who appears to have possessed any distinctive character; the Insensati follow. After the reign of Dagobert, most of the provinces beyond the Loire fall off, as it may be said, from the monarchy, and hardly belong to it for a century.

V. The fifth period begins with the accession of Clovis II, son of Dagobert, in 638, and terminates with Pepin Heristal's victory over the Neustrians at Testry, in 687. It is distinguished by the apparent equality of the two remaining kingdoms, Burgundy having now fallen into that of Neustria, and by the degradation of the royal line, in each alike, into puppets of the mayors of the palace. It is, in Austrasia, the triumph of the aristocracy, among whom the bishops are still more prominent than before. Ebroin holds the mayoralty of Neustria with an unsteady command; but in Austrasia the progenitors of Pepin Heristal grow up for two generations in wealth and power, till he becomes the acknowledged chief of that part of the kingdom, bearing the title of duke instead of mayor, and by the battle of Testry puts an end to the independence of Neustria.

VI. From this time the family of Pepin is virtually sovereign in France, though at every vacancy kings of the royal house are placed by them on the throne. Charles Martel, indeed, son of Pepin, is not acknowledged, even in Austrasia, for a short time after his father's death, and Neustria attempts to regain her independence; but he is soon called to power, defeats, like his father, the western Franks, and becomes, in almost as great

a degree as his grandson, the founder of a new monarchy. So completely is he recognised as sovereign, though not with the name of king, that he divides France, as an inheritance, among his three sons. But soon one only, Pepin the Short, by fortune or desert, becomes possessor of this goodly bequest. In 752 the new dynasty acquires a legal name by the coronation of Pepin.

IX, page 8.—The true cause, M. Michelet observes ("Hist. de France," ii, 39), of the Saxon wars, which had begun under Charles Martel, and were in some degree defensive on the part of the Franks, was the ancient antipathy of race, enhanced by the growing tendency to civilized habits among the latter. This, indeed, seems sufficient to account for the conflict, without any national antipathy. It was that which makes the red Indian perceive an enemy in the Anglo-American, and the Australian savage in the Englishman. The Saxons, in their deep forests and scantily cultivated plains, could not bear fixed boundaries of land. Their gau was indefinite; the mansus was certain; it annihilated the barbarian's only method of combining liberty with possession of land—the right of shifting his occupancy.* It is not probable, from subsequent events, that the Saxons held very tenaciously by their religion; but when Christianity first offered itself, it came in the train of a conqueror. Nor could Christianity, according at least to the ecclesiastical system, be made compatible with such a state of society as the German in that age. Hence the Saxons endeavoured to burn the first churches, thus drawing retaliation on their own idols.

The first apostles of Germany were English; and of these the most remarkable was St. Boniface. But this had been in the time of Charles Martel and Pepin. The labours of these missionaries were chiefly in Thuringia, Franconia, and Bavaria, and were rewarded with great success. But we may here consider them only in their results on the Frank monarchy. Those parts of Germany had long been subject to Austrasia, but, except so far as they furnished troops, scarcely formed an integrant portion of that kingdom. The subjection of a heathen tribe is totally different from that of a Christian province. With the Church came churches, and for churches there must be towns, and for towns a magistracy, and for magistracy law and the means of enforcing it. How different was the condition of Bavaria or Hesse in the ninth century from that of the same countries in the seventh! Not outlying appendages to the Austrasian

* Michelet refers to Grimm, who is excellent authority. The Saxons are likely to have maintained the old customs of the age of Tacitus longer than German tribes on the Rhine and Main.

monarchy, hardly counted among its subjects, but capable of standing by themselves, as co-ordinate members of the empire, an equipoise to France herself, full of populous towns, wealthy nobles and prelates, better organized and more flourishing states than their neighbours on the left side of the Rhine. Charlemagne founded eight bishoprics in Saxony, and distributed the country into dioceses.

X, page 9.—The project of substituting a Frank for a Byzantine sovereign was by no means new in 800. Gregory II, by a letter to Charles Martel in 741, had offered to renounce his allegiance to the empire, placing Rome under the protection of the French chief, with the title of consul or senator. The immediate government he doubtless meant to keep in the hands of the Holy See. He supplicated, at the same time, for assistance against the Lombards, which was the principal motive for this offer. Charles received the proposal with pleasure, but his death ensued before he had time to take any steps toward fulfilling so glorious a destiny. When Charlemagne acquired the rank of patrician at Rome in 789, we may consider this as a part performance of Gregory II's engagement, and the supreme authority was virtually in the hands of the King of the Franks; but the renunciation of allegiance toward the Greek empire had never positively taken place, and there are said to have been some tokens of recognition of its nominal sovereignty almost to the end of the century.

It is contended by Sir Francis Palgrave that Charlemagne was chosen by the Romans as lawful successor of Constantine V, whom his mother Irene had dethroned in 795, the usage of the empire having never admitted a female sovereign. And for this he quotes two ancient chronicles, one of which, however, appears to have been copied from the other. It is indeed true, which he omits to mention, that Leo III had a singular scheme of a marriage between Charles and Irene, which would for a time have united the empire. The proposal was actually made, but prudently rejected by the Greek lady.

It remains, nevertheless, to be shown by what right Leo III, cum omni Christiano populo—that is, the priests and populace of degenerate Rome—could dispose of the entire empire, or affect to place a stranger on the throne of Constantinople; for if Charles were the successor of Constantine V, we must draw this conclusion. Rome, we should keep in mind, was not a jot more invested with authority than any other city; the Greek capital had long taken her place; and in every revolution of new Rome, the decrepit mother had without hesitation obeyed. Nor does it seem to me exceedingly material, if the case be such, that

Charlemagne was not styled Emperor of the West, or successor of Augustulus. It is evident that his empire, relatively to that of the Greeks, was western; and we do not find that either he or his family ever claimed an exclusive right to the imperial title. The pretension would have been diametrically opposed both to prescriptive right and actual possession. He wrote to the Emperor Nicephorus, successor of Irene, as fraternitas vestra; but it is believed that the Greeks never recognised the title of a Western barbarian. In a later age, indeed, some presumed to reckon the Emperor of Constantinople among kings. A writer of the fourteenth century says, in French: "Or devez savoir qu'il ne doit estre sur terre qu'un seul empereur, combien que celui de Constantinople estime estre seul empereur; mais non est, il n'est fors seulement qu'un roy." (Du Cange, voc. Imperator, which is worth consulting.) The Kings of France and Castile, as well as our own Anglo-Saxon monarchs in the tenth century, and even those of Bulgaria, sometimes assumed the imperial title. But the Anglo-Saxons preferred that of Basileus, which was also a Byzantine appellation.

The probable design of Charlemagne, in accepting the title of emperor, was not only to extend his power as far as possible in Italy, but to invest it with a sort of sacredness and prescriptive dignity in the eyes of his barbarian subjects. These had been accustomed to hear of emperors as something superior to kings; they were themselves fond of pompous titles, and the chancery of the new Augustus soon borrowed the splendid ceremonial of the Byzantine court. His councillors approached him on their knees, and kissed his feet. Yet it does not appear from history that his own royal power, certainly very considerable before, was much enhanced after it became imperial. He still took the advice, and legislated with the consent, of his leudes and bishops; in fact, he continued to be a German, not a Roman, sovereign. In the reign of his family this prevalence of the Teutonic element in the Carlovingian polity became more and more evident; the bishops themselves, barbarian in origin and in manners, can not be reckoned in the opposite scale.

This was a second failure of the attempt, or at least the scheme, of governing barbarians upon a Roman theory. The first had been tried by the sons of Clovis and the high-spirited Visigoth, Brunehaut. But the associations of Roman authority with the imperial name were too striking to be lost forever; they revived again in the twelfth and thirteenth centuries with the civil law, and gained strength with the Ghibelin faction in Italy. Even in France and England, as many think, they were by no means ineffectual; though it was necessary to substitute the ab-

stract principle of royalty for the Lex Regia of the Roman Empire.

XI, page 11.—A question of the utmost importance had been passed over in the elevation of Charlemagne to the imperial title. It was that of hereditary succession. No allusion, as far as I have found, was made to this in the irregular act by which the Pope, with what he called the Roman people, transferred their allegiance from Constantinople to Aix-la-Chapelle. It was, indeed, certain that the empire had not only passed for hereditary from the time of Augustus, but ever since that of Diocletian had been partible among the imperial family at the will of the possessor. Yet the whole proceeding was so novel, and the pretensions of the Holy See implied in it so indefinite, that some might doubt whether Charles had acquired, along with the rank of imperator, its ancient prerogatives. There was also a momentous consideration, how far his Frank subjects, accustomed latterly to be consulted on royal succession, with their rights of election, within the limits of the family, positively recognised at the accession of Pepin, and liable to become jealous of Roman theories of government, would acquiesce in a simple devolution of the title on the eldest born as his legal birthright. In the first prospective arrangement, accordingly, which Charles made for the succession, that at Thionville, in 806, a partition among his three sons was designed, with the largest share reserved for the eldest. But though Italy, by which he meant, as he tells us, Lombardy, was given to one of the younger, care is taken by a description of the boundaries to exclude Rome itself, as well as the whole exarchate of Ravenna, become, by Pepin's donation, the patrimony of St. Peter; nor is there the least allusion to the title of emperor. Are we to believe that he relinquished the Eternal City to its bishop, though styling himself, in this very instrument, Romani rector imperii, and having literally gained not another inch of territory by that dignity? It is surely more probable that he reserved the sovereignty over Rome, to be annexed to the rank of emperor whenever he should obtain that for his eldest son. And on the death of this son, and of his next brother, some years afterward, the whole succession devolving on Louis the Debonair, Charlemagne presented this prince to the great Placitum of the nobles and bishops at Aix-la-Chapelle in 813, requesting them to name him king and emperor. No reference was made to the Pope for his approbation; and thus the German principle of sovereignty gained a decisive victory over the Roman. If some claim of the Pope to intermeddle with the empire was intimated at the coronation of Louis at Rheims by Stephen II in 816, which does not seem certain, it could only have

been through the Pope's knowledge of the personal submissiveness to ecclesiastical power which was the misfortune of that prince. He had certainly borne the imperial title from his father's death.

In the division projected by Louis in 817, to take place on his death, and approved by an assembly at Aix, a considerable supremacy was reserved for the future emperor; he was constituted, in effect, a sort of suzerain, without whose consent the younger brothers could do nothing important. Thus the integrity of the empire was maintained, which had been lost in the scheme of Charlemagne in 806. But M. Fauriel (vol. iv, p. 83) reasonably suspects an ecclesiastical influence in suggesting this measure of 817, which was an overt act of the Roman, or imperial, against the barbarian party. If the latter consented to this in 817, it was probably either because they did not understand it, or because they trusted to setting it aside. And, as is well known, the course of events soon did this for them. "It is indisputable," says Ranke, "that the order of succession to the throne, which Louis the Pious, in utter disregard of the warnings of his faithful adherents, and in opposition to all German modes of thinking, established in the year 817, was principally brought about by the influence of the clergy." ("Hist. of Reformation," Mrs. Austin's translation, vol. i, p. 9.) He attributes the concurrence of that order, in the subsequent revolt against Louis, to the endeavours he had made to deviate from the provisions of 819 in favour of his youngest son, Charles the Bald.

XII, page 14.—The second period of Carlovingian history, or that which elapsed from the reign of Charles the Bald to the accession of Hugh Capet, must be reckoned the transitional state, through scenes of barbarous anarchy, from the artificial scheme devised by Charlemagne, in which the Roman and German elements of civil policy were rather in conflict than in union, to a new state of society—the feudal, which, though pregnant itself with great evil, was the means both of preserving the frame of European policy from disintegration, and of elaborating the moral and constitutional principles upon which it afterward rested.

This period exhibits, upon the whole, a failure of the grand endeavour made by Charlemagne for the regeneration of his empire. This proceeded very much from the common chances of hereditary succession, especially when not counterbalanced by established powers independent of it. Three of his name, Charles the Bald, the Fat, and the Simple, had time to pull down what the great legislator and conqueror had erected. Encouraged

by their pusillanimity and weakness, the nobility strove to revive the spirit of the seventh century. They entered into a coalition with the bishops, though Charles the Bald had often sheltered himself behind the crosier; and they compelled his son, Louis the Stammerer, not only to confirm their own privileges and those of the Church, but to style himself "King, by the grace of God and election of the people"; which, indeed, according to the established constitution, was no more than truth, since the absolute right to succession was only in the family. The inability of the crown to protect its subjects from their invaders rendered this assumption of aristocratic independence absolutely necessary. In this age of agony, Sismondi well says, the nation began to revive; new social bodies sprung from the carcass of the great empire. France, so defenceless under the Bald and the Fat Charleses, bristled with castles before 930. She renewed the fable of Deucalion; she sowed stones, and armed men rose out of them. The lords surrounded themselves with vassals; and had not the Norman incursions ceased before, they would have met with a much more determined resistance than in the preceding century. ("Hist. des Français," iii, 218, 378; iv, 9.)

Notwithstanding the weakness of the throne, the promise of the Franks to Pepin, that they would never elect a king out of any other family, though broken on two or three occasions in the tenth century, seems to have retained its hold upon the nation, so that an hereditary right in his house was felt as a constitutional sentiment, until experience and necessity overcame it. The first interruption to this course was at the election of Eudes, on the death of Charles the Fat, in 888. Charles the Simple, son of Carloman, a prince whose short and obscure reign over France had ended in 884, being himself the only surviving branch, in a legitimate line, of the imperial house (for the frequent deaths of those princes without male issue is a remarkable and important circumstance), was an infant of three years old. The kingdom was devastated by the Normans, whom it was just beginning to resist with somewhat more energy than for the last half century; and Eudes, a man of considerable vigour, possessed several counties in the best parts of France. The nation had no alternative but to choose him for their king. Yet, when Charles attained the age of fifteen, a numerous party supported his claim to the throne, which he would probably have substantiated, if the disparity of abilities between the competitors had been less manifest. Eudes, at his death, is said to have recommended Charles to his own party; and it is certain that he succeeded without opposition. His own weak character, however, exposing him to fresh rebellion, Robert, brother of Eudes, and his son-in-law, Rodolph, became Kings of France—

that is, we find their names in the royal list, and a part of the kingdom acknowledged their sovereignty. But the south stood off altogether, and Charles preserved the allegiance of the north-eastern provinces. Robert, in fact, who was killed one year after his partisans had proclaimed him, seems to have no great pretensions, de facto any more than de jure, to be reckoned at all; nor does any historian give the appellation of Robert II to the son of Hugh Capet. The father of Hugh Capet, Hugh the Great, son of Robert and nephew of Eudes, being Count of Paris and Orleans, who had bestowed the crown on his brother-in-law, Rodolph of Burgundy, instead of wearing it himself, paid such deference to the prejudices of at least the majority of the nation in favour of the house of Charlemagne, that he procured the election of Louis IV, son of Charles the Simple, a boy of thirteen years, and then an exile in England; from which circumstance he has borne the name of Outremer. And though he did not reign without some opposition from his powerful vassal, he died in possession of the crown, and transmitted it to be worn by his son Lothaire and his grandson Louis V. It was on the death of this last young man that Hugh Capet thought it time to set aside the rights of Charles, the late king's uncle, and call himself king, with no more national consent than the prelates and barons who depended on him might afford; principally, it seems, through the adherence of Adalberon, Archbishop of Rheims, a city in which the kings were already wont to receive the crown. Such is the national importance which a merely local privilege may sometimes bestow. Even the voice of the capital, regular or tumultuous, which in so many revolutions has determined the obedience of a nation, may be considered as little more than a local superiority.

A writer distinguished among living historians, M. Thierry, has found a key to all the revolutions of two centuries in the antipathy of the Romans—that is, the ancient inhabitants—to the Franks or Germans. The latter were represented by the house of Charlemagne; the former by that of Robert the Brave, through its valiant descendants, Eudes, Robert, and Hugh the Great. And this theory of races, to which M. Thierry is always partial, and recurs on many occasions, has seemed to the judicious and impartial Guizot the most satisfactory of all that have been devised to elucidate the Carlovingian period, though he does not embrace it to its full extent. ("Hist. de la Civilisation en France," leçon 24.) Sismondi (vol. iii, p. 58) had said in 1821, what he had probably written as early as M. Thierry: "La guerre entre Charles et ses deux frères fut celle des peuples romains, des Gaules qui rejetaient le joug germanique; la querelle insignifiante des rois fut soutenue avec ardeur, parce qu'elle

s'unissait à la querelle des peuples; et tous ces préjugés hostiles qui s'attachent toujours aux différences des langues et des mœurs, donnèrent de la constance et de l'acharnement aux combattans." This relates, indeed, to an earlier period, but still to the same conflict of races which M. Thierry has taken as the basis of the resistance made by the Neustrian provinces to the later Carlovingians. Thierry finds a similar contest in the wars of Louis the Debonair. In this he is compelled to suppose that the Neustrian Franks fell in with the Gauls, among whom they lived. But it may well be doubted whether the distinction of Frank descent, and consequently of national supremacy, was obliterated in the first part of the ninth century. The name of Franci was always applied to the whole people; the kings are always reges Francorum; so that we might in some respects rather say that the Gauls or Romans had been merged in the dominant races than the reverse. Wealth, also, and especially that springing from hereditary benefices, was chiefly in the hands of the barbarians; they alone, as is generally believed, so long as the distinction of personal law subsisted, were summoned to county or national assemblies; they perhaps retained, in the reign of Louis the Debonair, though we can not speak decisively as to this, their original language. It has been observed that the famous oath in the Romance language, pronounced by Louis of Germany at the Treaty of Strasburg, in 842, and addressed to the army of his brother, Charles the Bald, bears more traces of the southern, or Provençal, than of the northern dialect; and it is probable that the inhabitants of the southern provinces, whatever might have been the origin of their ancestors, spoke no other. This would not be conclusive as to the Neustrian Franks. But this is a disputable question.

A remarkable presumption of the superiority still retained by the Franks as a nation, even in the south of France, may be drawn from the Placitum, at Carcassonne, in 918. (Vaissette, "Hist. de Languedoc," vol. ii, appendix, p. 56; Meyer, "Institutions Judiciaires," vol. i, p. 419.) In this we find named six Roman, four Gothic, and eight Salian judges. It is certain that these judges could not have been taken relatively to the population of the three races in that part of France. Does it not seem most probable that the Franks were still reckoned the predominant people? Probably, however, the personal distinction, founded on difference of laws, expired earlier in Neustria; not that the Franks fell into the Roman jurisprudence, but that the original natives adopted the feudal customs.

This specious theory of hostile races, in order to account for the downfall of the Carlovingian, or Austrasian, dynasty, has not been unanimously received, especially in the extent to which

Thierry has urged it. M. Gaudet, the French editor of Richer (a contemporary historian, whose narrative of the whole period, from the accession of Eudes to the death of Hugh Capet, is published by Pertz in the "Monumenta Germaniæ Historica," vol. iii, and contains a great quantity of new and interesting facts, especially from A. D. 966 to 987), appeals to this writer in contradiction of the hypothesis of M. Thierry. The appeal, however, is not solely upon his authority, since the leading circumstances were sufficiently known; and, to say the truth, I think that more has been made of Richer's testimony in this particular view than it will bear. Richer belonged to a monastery at Rheims, and his father had been a man of some rank in the confidence of Louis IV and Lothaire. He had, therefore, been nursed in respect for the house of Charlemagne, though, with deference to his editor, I do not perceive that he displays any repugnance to the change of dynasty.

Though the differences of origin and language, so far as they existed, might be by no means unimportant in the great revolution near the close of the tenth century, they can not be relied upon as sufficiently explaining its cause. The partisans of either family were not exclusively of one blood. The house of Capet itself was not of Roman, but probably of Saxon descent. The difference of races had been much effaced after Charles the Bald, but it is to be remembered that the great beneficiaries, the most wealthy and potent families in Neustria or France, were of barbarian origin. One people, so far as we can distinguish them, was by far the more numerous; the other, of more influence in political affairs. The personal distinction of law, however, which had been the test of descent, appears not to have been preserved in the north of France much after the ninth century; and the Roman, as has been said above, had yielded to the barbaric element—to the feudal customs. The Romance language, on the other hand, had obtained a complete ascendency; and that not only in Neustria, or the parts west of the Somme, but throughout Picardy, Champagne, and part of Flanders. But if we were to suppose that these regions were still in some way more Teutonic in sentiment than Neustria, we certainly could not say the same of those beyond the Loire. Aquitaine and Languedoc, almost wholly Roman, to use the ancient word, or French, as they might now be called, among whose vine-covered hills the barbarians of the Lower Rhine had hardly formed a permanent settlement, or, having done so, had early cast off the slough of their rude manners, had been the scenes of a long resistance to the Merovingian dynasty. The tyranny of Childeric and Clotaire, the barbarism of the Frank invaders, had created an indelible hatred of their yoke. But they submitted without

reluctance to the more civilized government of Charlemagne, and displayed a spontaneous loyalty toward his line. Never did they recognise, at least without force, the Neustrian usurpers of the tenth century, or date their legal instruments, in truth the chief sign of subjection that they gave, by any other year than that of the Carlovingian sovereign. If Charles the Simple reaped little but this nominal allegiance from his southern subjects, he had the satisfaction to reflect that they owned no one else.

But a rapacious aristocracy had pressed so hard on the weakness of Charles the Bald and his descendants that, the kingdom being wholly parcelled in great fiefs, they had not the resources left to reward self-interested services as before, nor to resist a vassal far superior to themselves. Laon was much behind Paris in wealth and populousness, and yet even the two capitals were inadequate representatives of the proportionate strength of the king and the count. Power, as simply taken, was wholly on one side; yet on the other was prejudice, or rather an abstract sense of hereditary right; and this sometimes became a source of power. But the long greatness of one family, its manifest influence over the succession to the throne, the conspicuous men whom it produced in Eudes and Hugh the Great, had silently prepared the way for a revolution, neither unnatural nor premature, nor in any way dangerous to the public interests. It is certainly probable that the Neustrian French had come to feel a greater sympathy with the house of Capet than with a line of kings who rarely visited their country, and whom they could not but contemplate as in some adverse relation to their natural and popular chiefs. But the national voice was not greatly consulted in those ages. It is remarkable that several writers of the nineteenth century, however they may sometimes place the true condition of the people in a vivid light, are constantly relapsing into a democratic theory. They do not by any means underrate the oppressed and almost servile condition of the peasantry and burgesses, when it is their aim to draw a picture of society; yet in reasoning on a political revolution, such as the decline and fall of the German dynasty, they ascribe to these degraded classes both the will and the power to effect it. The proud nationality which spurned a foreign line of princes could not be felt by an impoverished and afflicted commonalty. Yet when M. Thierry alludes to the rumour that the family of Capet was sprung from the commons (some said, as we read in Dante, from a butcher), he adds, "Cette opinion, qui se conserva durant plusieurs siècles, ne fut pas nuisible à sa cause"—as if there had been as effective a tiers-état in 987 as eight hundred years afterward. If, however, we are meant only to seek this sentiment among the nobles

of France, I fear that self-interest, personal attachments, and a predominant desire of maintaining their independence against the crown were motives far more in operation than the wish to hear the king speak French instead of German.

It seems, upon the whole, that M. Thierry's hypothesis, countenanced as it is by M. Guizot, will not afford a complete explanation of the history of France between Charles the Fat and Hugh Capet. The truth is, that the accidents of personal character have more to do with the revolutions of nations than either philosophical historians or democratic politicians like to admit. If Eudes and Hugh the Great had been born in the royal line, they would have preserved far better the royal power. If Charles the Simple had not raised too high a favourite of mean extraction, he might have retained the nobles of Lorraine and Champagne in their fidelity. If Adalberon, Archbishop of Rheims, had been loyal to the house of Charlemagne, that of Capet would not, at least so soon, have ascended the throne. If Louis V had lived some years, and left a son to inherit the lineal right, the more precarious claim of his uncle would not have undergone a disadvantageous competition with that of a vigorous usurper. M. Gaudet has well shown, in his notice on Richer, that the opposition of Adelberon to Charles of Lorraine was wholly on personal grounds. No hint is given of any national hostility; but whatever of national approbation was given to the new family, and doubtless in Neustrian France it was very prevalent, must rather be ascribed to their own reputation than to any peculiar antipathy toward their competitor. Hugh Capet, it is recorded, never wore the crown, though styling himself king, and took care to procure, in an assembly held in Paris, the election of his son Robert to succeed him—an example which was followed for several reigns.

A late Belgian writer, M. Gérard, in a spirited little work, "La Barbarie Franque et la Civilisation Romaine" (Bruxelles, 1845), admitting the theory of the conflict of races, indignantly repels the partisans of what has been called the Roman element. Thierry, Michelet, and even Guizot, are classed by him as advocates of a corrupted race of degenerate provincials, who called themselves Romans, endeavouring to set up their pretended civilization against the free and generous spirit of the barbarians from whom Europe has derived her proudest inheritance. Avoiding the aristocratic arrogance of Boulainvilliers, and laughing justly at the pretensions of modern French nobles, if any such there are, which I disbelieve, who vaunt their descent as an order from the race of Franks, he bestows his admiration on the old Austrasian portion of the monarchy, to which, as a Belgian, he belongs. But in his persuasion that the two races were in distinct

opposition to each other, and have continued so ever since, he hardly falls short of Michelet.

I will just add to this long note a caution to the reader, that it relates only to the second period of the Carlovingian kings, that from 888 to 987. In the reigns of Louis the Debonair and Charles the Bald I do not deny that the desire for the separation of the empire was felt on both sides. But this separation was consummated at Verdun in 843, except that, the kingdom of Lorraine being not long afterward dismembered, a small portion of the modern Belgium fell into that of France.

XIII, page 17.—The cowardice of the French, during the Norman incursions of the ninth century, has struck both ancient and modern writers, considering that the invaders were by no means numerous, and not better armed than the inhabitants. No one, says Paschasius Radbert, could have anticipated that a kingdom so powerful, extensive, and populous would have been ravaged by a handful of barbarians. ("Mém. de l'Acad. des Inscr.," vol. xv, p. 639.) Two hundred Normans entered Paris, in 865, to take away some wine, and retired unmolested; their usual armies seem to have been only of a few hundreds. (Sismondi, vol. iii, p. 170.) Michelet even fancies that the French could not have fought so obstinately at Fontenay as historians relate, on account of the effeminacy which ecclesiastical influence had produced. This is rather an extravagant supposition. But panic is very contagious, and sometimes falls on nations by no means deficient in general courage. It is to be remembered that the cities, even Paris, were not fortified ("Mém. de l'Acad.," vol. xvii, p. 289); that the government of Charles the Bald was imbecile; that no efforts were made to array and discipline the people; that the feudal polity was as yet incomplete and unorganized. Can it be an excessive reproach that the citizens fled from their dwellings, or redeemed them by money from a terrible foe against whom their mere superiority of numbers furnished no security? Every instance of barbarous devastation aggravated the general timidity. Aquitaine was in such a state that the Pope removed the Archbishop of Bordeaux to Bourges, because his province was entirely wasted by the pagans. (Sismondi, vol. iii, p. 210.) Never was France in so deplorable a condition as under Charles the Bald; the laity seem to have deserted the national assemblies; almost all his capitularies are ecclesiastical; he was the mere servant of his bishops. The clergy were now at their zenith; and it has been supposed that, noble families becoming extinct (for few names of laymen appear at this time in history), the Church, which always gained and never lost, took the ascendant in national councils. And this

contributed to render the nation less warlike, by depriving it of its natural leaders. It might be added, according to Sismondi's very probable suggestion, that the faith in relics, encouraged by the Church, lowered the spirit of the people. (Vol. iii, passim; Michelet, vol. ii, p. 120, et post.) And it is a quality of superstition not to be undeceived by experience. Some have attributed the weakness of France at this period to the bloody battle of Fontenay, in 841. But if we should suppose the loss of the kingdom on that day to have been forty thousand, which is a high reckoning, this would not explain the want of resistance to the Normans for half a century.

The beneficial effect of the cession of Normandy has hardly been put by me in sufficiently strong terms. No measure was so conducive to the revival of France from her abasement in the ninth century. The Normans had been distinguished by a peculiar ferocity toward priests; yet when their conversion to Christianity was made the condition of their possessing Normandy, they were ready enough to comply, and in another generation became among the most devout of the French nation. It may be observed that pagan superstitions, though they often take great hold on the imagination, seldom influence the conscience or sense of duty; they are not definite or moral enough for such an effect, which belongs to positive religions, even when false. And as their efficacy over the imagination itself is generally a good deal dependent on local associations, it is likely to be weakened by a change of abode. But a more certain explanation of the new zeal for Christianity which sprung up among the Normans may be found in the important circumstance that, having few women with them, they took wives (they had made widows enough) from the native inhabitants. These taught their own faith to their children. They taught also their own language; and in no other manner can we so well account for the rapid extinction of that of Scandinavia in that province of France.

Sismondi discovers two causes for the determination of the Normans to settle peaceably in the territory assigned to them; the devastation which they had made along the coast, rendering it difficult to procure subsistence; and the growing spirit of resistance in the French nobility, who were fortifying their castles and training their vassals on every side. But we need not travel far for an inducement to occupy the fine lands on the Seine and Eure. Piracy and plunder had become their resource, because they could no longer find subsistence at home; they now found it abundantly in a more genial climate. They would probably have accepted the same terms fifty years before.

XIV, page 19.—This has been put in the strongest language by Sismondi, Thierry, and other writers. Guizot, however, thinks that it has been urged too far, and that the first four Capetians were not quite so insignificant in their kingdom as has been asserted. "When we look closely at the documents and events of their age, we see that they have played a more important part, and exerted more influence, than is ascribed to them. Read their history; you will see them interfere incessantly, whether by arms or by negotiation, in the affairs of the county of Burgundy, of the county of Anjou, of the county of Maine, of the duchy of Guienne—in a word, in the affairs of all their neighbours, and even of very distant fiefs. No other suzerain certainly, except the Dukes of Normandy, who conquered a kingdom, took a part at that time so frequently, and at so great a distance from the centre of his domains. Turn over the letters of contemporaries, for example, those of Fulbert and of Yves, Bishops of Chartres, or those of William III, Duke of Guienne, and many others, you will see that the King of France was not without importance, and that the most powerful suzerains treated him with great deference." He appeals especially to the extant act of the consecration of Philip I, in 1059, where a Duke of Guienne is mentioned among the great feudatories, and asks whether any other suzerain took possession of his rank with so much solemnity. ("Civilisation en France," leçon 42.) "As there was always a country called France and a French people, so there was always a king of the French; very far, indeed, from ruling the country called his kingdom, and without influence on the greater part of the population, but yet no foreigner, and with his name inscribed at the head of the deeds of all the local sovereigns, as one who was their superior, and to whom they owed several duties" (leçon 43). It may be observed also that the Church recognised no other sovereign; not that all the bishops held of him, for many depended on the great fiefs, but the ceremony of consecration gave him a sort of religious character, to which no one else aspired. And Suger, the politic minister of Louis VI and Louis VII, made use of the bishops to maintain the royal authority in distant provinces (leçon 42). This, nevertheless, rather proves that the germ of future power was in the kingly office than that Hugh, Robert, Henry, and Philip exercised it. The most remarkable instance of authority during their reigns was the war of Robert in Burgundy, which ended in his bestowing that great fief on his brother. I have observed that the Duke of Guienne subscribes a charter of Henry I in 1051. ("Rec. des Historiens," vol. xi, p. 589.) Probably there are other instances. Henry uses a more pompous and sovereign phraseology in his diplomas than his father; the young lion was trying his roar.

I concur, on the whole, in thinking with M. Guizot that in shunning the language of uninformed historians, who spoke of all kings of France as equally supreme, it had become usual to depreciate the power of the first Capetians rather too much. He had, however, to appearance, done the same a few years before the delivery of these lectures, in 1829; for in his "Collection of Memoirs" (vol. i, p. 6, published in 1825) he speaks rather differently of the first four reigns: "C'est l'époque où le royaume de France et la nation française n'ont existé, à vrai dire, que de nom." He observes, also, that the chroniclers of the royal domain are peculiarly meagre as compared with those of Normandy.

XV, page 35.—It may excite surprise that in any sketch, however slight, of the reign of Philip IV, no mention should be made of an event than which none in his life is more celebrated—the fate of the Knights Templars. But the truth is, that when I first attended to the subject, almost forty years since, I could not satisfy my mind on the disputed problem as to the guilt imputed to that order, and suppressed a note which I had written as too inconclusive to afford any satisfactory decision. Much has been published since on the Continent, and the question has assumed a different aspect; though, perhaps, I am not yet more prepared to give an absolutely determinate judgment than at first.

The general current of popular writers in the eighteenth century was in favour of the innocence of the Templars; in England it would have been almost paradoxical to doubt of it. The rapacious and unprincipled character of Philip, the submission of Clement V to his will, the apparent incredibility of the charges from their monstrousness, the just prejudice against confessions obtained by torture and retracted afterward—the other prejudice, not always so just, but in the case of those not convicted on fair evidence deserving a better name in favour of assertions of innocence made on the scaffold and at the stake—created, as they still preserve, a strong willingness to disbelieve the accusations which came so suspiciously before us. It was also often alleged that contemporary writers had not given credit to these accusations, and that in countries where the inquiry had been less iniquitously conducted no proof of them was brought to light. Of these two grounds for acquittal, the former is of little value in a question of legal evidence, and the latter is not quite so fully established as we could desire.

Raynouard, who might think himself pledged to the vindication of the Knights Templars by the tragedy he had written on their fate, or at least would naturally have thus imbibed an at-

tachment to their cause, took up their defence in a "History of the Procedure." This has been reckoned the best work on that side, and was supposed to confirm their innocence. The question appears to have assumed something of a party character in France, as most history does; the honour of the crown, and still more of the Church, had advocates; but there was a much greater number, especially among men of letters, who did not like a decision the worse for being derogatory to the credit of both. Sismondi, it may easily be supposed, scarcely treats it as a question with two sides; but even Michaud, the firm supporter of Church and crown, in his "History of the Crusades," takes the favourable view. M. Michelet, however, not under any bias toward either of these, and manifestly so desirous to acquit the Templars that he labours by every ingenious device to elude or explain away the evidence, is so overcome by the force and number of testimonies that he ends by admitting so much as leaves little worth contending for by their patrons. He is the editor of the "Procès des Templiers," in the "Documens Inédits, 1841," and had previously given abundant evidence of his acquaintance with the subject in his "Histoire de France," vol. iv, pp. 243, 345 (Bruxelles edition).

But the great change that has been made in this process, as carried forward before the tribunal of public opinion from age to age, is owing to the production of fresh evidence. The deeply learned Orientalist, M. von Hammer, now Count Hammer Purgstall, in the sixth volume of a work published at Vienna in 1818, with the title "Mines de l'Orient exploitées,"[1] inserted an essay in Latin, "Mysterium Baphometis Revelatum, seu Fratres Militiæ Templi qua Gnostici et quidem Ophiani, Apostasiæ, Idoloduliæ, et Impuritatis convicti per ipsa eorum Monumenta." This is designed to establish the identity of the idolatry ascribed to the Templars with that of the ancient Gnostic sects, and especially with those denominated Ophites, or worshippers of the serpent; and to prove also that the extreme impurity which forms one of the revolting and hardly credible charges adduced by Philip IV is similar in all its details to the practice of the Gnostics.

This attack is not conducted with all the coolness which bespeaks impartiality; but the evidence is startling enough to make refutation apparently difficult. The first part of the proof, which consists in identifying certain Gnostic idols, or, as some suppose, amulets, though it comes much to the same, with the description of what are called Baphometic, in the proceedings against the Templars, published by Dupuy, and since in the "Documens

[1] I give this French title, but there is also a German title-page, as most of the memoirs are either in that language or in Latin.

Inédits," is of itself sufficient to raise a considerable presumption. We find the word metis continually on these images, of which Von Hammer is able to describe twenty-four. Baphomet is a secret word ascribed to the Templars. But the more important evidence is that furnished by the comparison of sculptures extant on some Gnostic and Ophitic bowls with those in churches built by the Templars. Of these there are many in Germany, and some in France. Von Hammer has examined several in the Austrian dominions, and collected accounts of others. It is a striking fact that in some we find, concealed from the common observer, images and symbols extremely obscene; and as these, which can not here be more particularly adverted to, betray the depravity of the architects, and can not be explained away, we may not so much hesitate as at first to believe that impiety of a strange kind was mingled up with this turpitude. The presumptions, of course, from the absolute identity of many emblems in churches with the Gnostic superstitions in their worst form, grow stronger and stronger by multiplication of instances; and though coincidence might be credible in one, it becomes infinitely improbable in so many. One may here be mentioned, though among the slightest resemblances. The Gnostic emblems exhibit a peculiar form of cross, **T**; and this is common in the churches built by the Templars. But the freemasons, or that society of architects to whom we owe so many splendid churches, do not escape M. von Hammer's ill opinion better than the Templars. Though he conceives them to be of earlier origin, they had drunk at the same foul spring of impious and impure Gnosticism. It is rather amusing to compare the sympathy of our own modern ecclesiologists with those who raised the mediæval cathedrals, their implicit confidence in the piety which ennobled the conceptions of these architects, with the following passage in a memoir by M. von Hammer, " Sur deux Coffrets Gnostiques du moyen Age, du cabinet de M. le Duc de Blacas. Paris, 1832":

" Les architectes du moyen âge, initiés dans tous les mystères du Gnosticisme le plus dépravé, se plaisaient à en multiplier les symboles au dehors et au dedans de leurs églises; symboles dont le véritable sens n'était entendu que des adeptes, et devaient rester voilés aux yeux des profanes. Des figures scandaleuses, semblables à celles des églises de Montmorillon et de Bordeaux, se retrouvent sur les églises des Templiers à Eger en Bohême, à Schongrabern en Autriche, à Fornuovi près de Parme, et en d'autres lieux; nommément le chien (canis aut gattus niger) sur les bas-reliefs de l'église gnostique d'Erfurt" (p. 9). The Stadinghi, heretics of the thirteenth century, are charged, in a bull of Gregory IX, with exactly the same pro-

faneness, even including the black cat, as the Templars of the next century. This is said by Von Hammer to be confirmed by sculptures (p. 7).

The statutes of the Knights Templars were compiled in 1128, and, as it is said, by St. Bernard. They have been published in 1840 from manuscripts at Dijon, Rome, and Paris, by M. Maillard de Chambure, Conservateur des Archives de Bourgogne.

The title runs—"Règles et Statuts secrets des Templiers." But as the French seems not so ancient as the above date, they may, perhaps, be a translation. It will be easily supposed that they contain nothing but what is pious and austere. The knights, however, in their intercourse with the East, fell rapidly into discredit for loose morals and many vices; so that Von Hammer rather invidiously begins his attack upon them by arguing the à priori probability of what he is about to allege. Some have, accordingly, endeavoured to steer a middle course; and, discrediting the charges brought generally against the order, have admitted that both the vice and the irreligion were truly attributed to a great number. But this is not at all the question, and such a pretended compromise is nothing less than an acquittal. The whole accusations which destroyed the order of the Temple relate to its secret rites and to the mode of initiation. If these were not stained by the most infamous turpitude, the unhappy knights perished innocently, and the guilt of their death lies at the door of Philip the Fair.

The novel evidence furnished by sculpture against the Templars has not been universally received. It was early refuted, or attempted to be refuted, by Raynouard and other French writers. "Il est reconnu aujourd'hui, même en Allemagne," says M. Chambure, editor of the "Règles et Statuts secrets des Templiers," "que le prétendu culte baphometique n'est qu'une chimère de ce savant, fondée sur un erreur de numismatique et d'architectonographie" (p. 82). As I am not competent to form a decisive opinion, I must leave this for the more deeply learned. The proofs of M. von Hammer are at least very striking, and it is not easy to see how they have been overcome. But it is also necessary to read the answer of Raynouard in the "Journal des Savans" for 1819, who has been partially successful in repelling some of his opponent's arguments, though it appeared to me that he had left much untouched. It seems that the architectural evidence is the most positive, and can only be resisted by disproving its existence, or its connection with the freemasons and Templars. [1848.]

XVI, page 62.—I have followed the common practice of translating Jeanne d'Arc by Joan of Arc. It has been taken for granted that Arc is the name of her birthplace. Southey says:

> "She thought of Arc, and of the dingled brook
> Whose waves, oft leaping in their craggy course,
> Made dance the low-hung willow's dripping twigs;
> And, where it spread into a glassy lake,
> Of that old oak, which on the smooth expanse
> Imaged its hoary mossy-mantled boughs."

And in another place:

> ——— "her mind's eye
> Beheld Domrémy and the plains of Arc."

It does not appear, however, that any such place as Arc exists in that neighbourhood, though there is a town of that name at a considerable distance. Joan was, as is known, a native of the village of Domrémy, in Lorraine. The French writers all call her Jeanne d'Arc, with the exception of one, M. Michelet (vii, 62), who spells her name Darc, which in a person of her birth seems more probable, though I can not account for the uniform usage of an apostrophe and capital letter.

I can not pass Southey's "Joan of Arc" without rendering homage to that early monument of his genius, which, perhaps, he rarely surpassed. It is a noble epic, never languid, and seldom diffuse; full of generous enthusiasm, of magnificent inventions, and with a well-constructed fable, or rather selection of history. Michelet, who thinks the story of the Maid unfit for poetry, had apparently never read Southey; but the author of an article in the "Biographie Universelle" says very well: "Le poëme de M. Southey en Anglais, intitulé 'Joan of Arc,' est la tentative la plus heureuse que les Muses aient faites jusqu'ici pour célébrer l'héroïne d'Orléans. C'est encore une des singularités de son histoire de voir le génie de la poësie Anglaise inspirer de beaux vers en son honneur, tandis que celui de la poësie Française a été jusqu'ici rebelle à ceux qui ont voulu la chanter, et n'a favorisé que celui qui a outragé sa mémoire." If, however, the Muse of France has done little justice to her memory, it has been reserved for another Maid of Orleans, as she has well been styled, in a different art, to fix the image of the first in our minds, and to combine, in forms only less enduring than those of poetry, the purity and inspiration with the unswerving heroism of the immortal Joan.

CHAPTER II

I, page 81.—It is almost of course with the investigators of Teutonic antiquities to rely with absolute confidence on the authority of Tacitus in his treatise, "De Moribus Germanorum." And it is indeed a noble piece of eloquence—a picture of manners so boldly drawn, and, what is more to the purpose, so probable in all its leading characteristics, that we never hesitate, in reading, to believe. It is only when we have closed the book that a question may occur to our minds, whether the Roman writer, who had never crossed the Rhine, was altogether a sufficient witness for the internal history, the social institutions, of a people so remote and so dissimilar. But though the sources of his information do not appear, it is manifest that they were copious. His geographical details are minute, distinct, and generally accurate. Perhaps in no instance have his representations of ancient Germany been falsified by direct testimony, if in a few circumstances there may be reason to suspect their exact faithfulness.

In the very slight mention of German institutions which I have made in the text there can be nothing to excite doubt. They are what Tacitus might easily learn, and what, in fact, we find confirmed by other writers. But when he comes to a more exact description of the social constitution, and of the different orders of men, it may not be unreasonable to receive his testimony with a less unhesitating assent than has commonly been accorded to it. A sentence, a word of Tacitus has passed for conclusive; and no theory which they contradict would be admitted. A modern writer, however, has justly pointed out that his informers might easily be deceived about the social institutions of the tribes beyond the Rhine; and, in fact, it is not on Tacitus himself, but on these unknown authorities, that we rely for the fidelity of his representations. We may readily conceive, by our own experience, the difficulty of obtaining a clear and exact knowledge of laws, customs, and manners for which we have no corresponding analogies. "Let us," says Luden to his countrymen, "ask an enlightened Englishman who speaks German concerning the political institutions of his country, and it will be surprising how little we shall understand from him. Ask him to explain what is a freeman, a freeholder, a copyholder, or a yeoman, and we shall find how hard it is to make national institutions and relations intelligible to a foreigner." (Luden, "Geschichte des Deutschen Volkes," vol. i, p. 702.)

This is, of course, not designed to undervalue the excellent work of Tacitus, to which almost exclusively we are indebted

for any acquaintance with the progenitors of the Anglo-Saxons and the Franks, but to point out a general principle, which may be far better applied to inferior writers, that they give a colour of their own country to their descriptions of foreign manners, and especially by the adoption of names only analogically appropriate. Thus the words servus, libertinus, ingenuus, nobilis, are not necessarily to be understood in a Roman sense when Tacitus employs them in his treatise on Germany. Servus is in Latin a slave; but the German described by him under that name is the lidus, subject to a lord, and liable to payments, but not without limit, as he himself explains. "Frumenti modum dominus, aut pecoris, aut vestis, ut colono, imperat; et servus hactenus paret." Here colonus, in the age of Tacitus, was as much a wrong word in one direction as servus was in another. For we believe that the colonus of early Rome was a tenant, or farmer, yielding rent, but absolutely a free man;[1] though in the third century, after barbarians had been settled on lands in the empire, we find it applied to a semi-servile condition. It is more worthy to be observed that his account of the kingly office among the Germans is not quite consistent. Sometimes it appears as if peculiar to certain tribes, "iis gentibus quæ regnantur" (c. 25); and here he seems to speak of the power as very great, opposing it to liberty, while at other times we are led to suppose an aristocratic senate and an ultimate right of decision in the people at large, with a very limited sovereign at the head (chaps. 7, 11, etc.). This triple constitution has been taken by Montesquieu for the foundation of our own in the well-known words, "Ce beau systême à été trouvé dans les bois."

II, page 82.—It is not easy to explain these partitions made by the barbarous nations on their settlement in the empire; and, what would be still more remarkable if historians were not so defective in that age, we find no mention of such partitions in any records, excepting their own laws and a few documents of the same class. Montesquieu says, "Ces deux tiers n'étaient pas que dans certains quartiers qu'on leur assigna" (l. 30, c. 8). Troja seems to hold the same opinion as to the first settlement of the Burgundians in Gaul, but admits a general division in 471: "Storia d' Italia nel medio evo" (iii, 1293). It is, indeed, impossible to get over the proof of such a partition, or at least one founded on a general law, arising from the fifty-fourth section of the Burgundian code: "Eodem tempore quo populus noster mancipiorum tertiam, et duas terrarum partes accepit." This code was promulgated by Gundobald early in the sixth century. It contains several provisions protecting the Roman

[1] Vide "Facciolati Lexicon."

in the possession of his third against any encroachment of the hospes, a word applied indifferently to both parties, as in common Latin, to host and guest.

The word sortes, which occurs both with the Burgundians and Visigoths, has often been referred to the general partition, on the hypothesis that the lands had been distributed by lot. This perhaps has no evidence except the erroneous inference from the word sors, but it is not wholly improbable. Savigny, indeed, observes that both the barbarian and the Roman estates were called sortes, referring to "Leges Visigothorum," lib. x, tit. 2, l. 1, where we find, in some editions, "sortes Gothicæ vel Romanæ"; but all the manuscripts, according to Bouquet, read "sortes Gothicæ et tertia Romanorum," which, of course, gives a contrary sense. ("Rec. des Hist.," iv, 430.)[2] It seems, from some texts of the Burgundian law, that the whole territory was not partitioned at once; because, in a supplement to the code not much before 520, provision is made for new settlers, who were to receive only a moiety. "De Romanis hoc ordinavimus, ut non amplius a Burgundionibus qui infra venerunt, requiratur, quam, ut præsens necessitas fuerit, medietas terræ. Alia vero medietas cum integritate mancipiorum a Romanis teneatur; nec exinde ullam violentiam patiantur." ("Leges Burgundionum, Additamentum Secundum," c. 11.) In this, as in the whole Burgundian law, we perceive a tenderness for the Roman inhabitant, and a continual desire to place him, as far as possible, on an equal footing with his new neighbour. The reason assigned for the partition is necessity; the Burgundian must live. It is true that to assign him two thirds of the land strikes us as an enormous spoliation. Montesquieu supposes that the barbarian took open and pasture lands, leaving the tilth to the ancient possessor, and that this accounts for the smaller proportion of slaves which he required (l. 30, c. 9). Sismondi has made a similar suggestion. It is dwelt upon by Troja, that the Lombards, taking a third of the produce instead of a portion of the lands themselves, reduced all the original possessors to the rank of tributaries. In none of the barbarous kingdoms was the Roman of so low a status as in theirs. But it may be said that the ancient law of nations, exercised by none more unsparingly than by the Romans themselves in Italy, confiscated the whole soil; that, if the Visigoths and Burgundians

[2] Procopius says, of the division made by Genseric in Italy, Αἴβυες τοὺς ἄλλους ἀφείλετο μὲν τοὺς ἀγροὺς, οἱ πλείστου τε ἦσαν καὶ ἄριστοι, ἐς δὲ τὸ τῶν Βανδίλων διάντιμον ἔθνος· καὶ ἀπ' αὐτοῦ κλῆροι Βανδίλων οἱ ἀγροὶ οὗτοι ἐς τόδε καλοῦνται τοῦ χρόνου. . . . . καὶ τὰ μὲν χωρία ξύμπαντα ὅσα τοῖς τε παισὶ καὶ τοῖς ἄλλοις Βανδίλοις Γιζέριχος παραδεδώκει, οὐδεμίας φοροῦ ἀπαγωγῆς ὑποτέλη ἐκέλευσεν εἶναι. ("De Bello Vandal," l. i, c. 8.) This passage gives no confirmation to the hypothesis of a partition by lot, but the contrary; and though we can not reason absolutely from the analogy of Africa to Gaul, it is natural to interpret κλῆροι Βανδίλων and sortes Salicæ in the same manner.

spared one third, if the Franks left some Roman possessors, this was an indulgent relaxation of their right. And this would be an excuse if we could for a moment look upon the barbarians as having a just cause of war. The contrary, however, is manifest in almost every case.

M. Fauriel thinks it probable that the Franks made, like the other barbarians, a partition, more or less regular, of the Roman lands in northern France. ("Hist. de la Gaule Méridionale," ii, 34.) Guizot takes a somewhat different view, and conceives that each chief took what best suited him, and lived there with his followers about him. ("Civilis en France," leçon 32.) But if the Franks adopted so aristocratic a division as to throw the lands which they occupied into the hands of a few proprietors, they must have gone on very different principles from the other nations, among whom we should infer, from their laws, a much greater equality to have been preserved. It seems, however, most probable on the whole, considering the silence of historians and laws, that the Franks made no such systematic distribution of lands as the earlier barbarians. They were, perhaps, less numerous, and, being at first less civilized, would feel more reluctance at submitting to any fixed principle of appropriation. That they disposesssed many of the Roman owners on the right bank of the Loire can not well be doubted. For though Raynouard, who treads in the steps of Dubos, denies that they took any but fiscal lands, which had belonged to the imperial domains ("Hist. du Droit Municipal," i, 256), Franks were surely as little disposed and as little able to live without lands as Burgundians, and they were a rougher people.[8] Yet both with respect to them and the other barbarians we may observe that the spoliation was not altogether so ruinous as would naturally be presumed. In consequence of the long decline and depopulation of the empire, the fruit of fiscal oppression, of frequent invasion, and civil wars, we may add also of pestilences and unfavourable seasons, much land had gone out of cultivation in Gaul; and though the proportion taken by the Goths and Burgundians was enormous, they probably occupied, in great measure, what the Roman proprietor had not the means of tilling.

This subject, after all, is by no means clear of embarrassment, especially as regards the Visigothic and Burgundian partitions. We are driven to suppose a dispersion of these conquering nations among their subjects, each man living separately on his

[8] M. Lehuerou supposes that the Franks, who served the empire in Gaul under the predecessors of Clovis, had received lands like the Burgundians and Visigoths: so that they were already in a great measure provided for, and that their subsequent acquisitions would be at the expense of the nations which they conquered. ("Instit. Merov.," i, 237, 268.) But the private estates of the Franks seem to have been principally in the north of France.

sors, contrary to the policy of all invaders; we are, apparently, to presume an equality of numbers between the Roman possessors and the barbarians, so that each should have his own hospes. The latter hypothesis may, perhaps, be dispensed with or considerably modified, but I do not see how to get rid of the former.

III, page 83.—The Salic law exists in two texts: one purely Latin, of which there are fifteen manuscripts; the other mingled with German words, of which there are three. Most have considered the latter to be the original; the manuscripts containing it are entitled Lex Salica antiquissima, or vetustior; the others generally run, Lex Salica recentior, or emendata. This seems to create a presumption. But M. Wraida, who published a history of the Salic law in 1808, inclines to think the pure Latin older than the other. M. Guizot adopts the same opinion ("Civilisation en France," leçon 9). M. Wraida refers its original enactment to the period when the Franks were still on the left bank of the Rhine—that is, long before the reign of Clovis. And this seems an evident inference from what is said in the prologue to the law, written long afterward. But, of course, it can not apply to those passages which allude to the Romans as subjects, or to Christianity. M. Guizot is of opinion that it bears marks of an age when the Franks had long been mingled with the Roman population. This is consistent with its having been revised by the sons of Clovis, Childebert, and Clotaire, as is asserted in the prologue. One manuscript has the words: "Hoc decretum est apud regem et principes ejus, et apud cunctum populum Christianum qui infra regnum Merwingorum consistunt." Neither Wraida nor Guizot think it older in its present text than the seventh century; and as Dagobert I appears in the prologue as one reviser, we may suppose him to be the king mentioned in the words just quoted. It is to be observed, however, that two later writers, M. Pertz, in "Monumenta Germaniæ Historica," and M. Pardessus, in "Mém. de l'Acad. des Inscriptions," vol. xv (Nouvelle Série), have entered anew on this discussion, and do not agree with M. Wraida, nor wholly with each other. M. Lehuerou is clearly of opinion that, in all its substance, the Salic code is to be referred to Germany for its birthplace, and to the period of heathenism for its date. ("Institutions Mérovingiennes," p. 83.)

The Ripuarian Franks Guizot, with some apparent reason, takes for the progenitors of the Austrasians; the Salian, of the Neustrians. The former were settled on the left bank of the Rhine, as Lœti, or defenders of the frontier, under the empire. These tribes were united under one government through the assassination of Sigebert at Cologne, in the last years of Clovis,

who assumed his crown. Such a theory might tend to explain the subsequent rivalry of these great portions of the Frank monarchy, though it is hardly required for that purpose. The Ripuarian code of law is referred by Guizot to the reign of Dagobert; Eccard, however, had conceived it to have been compiled under Thierry, the eldest son of Clovis. ("Rec. des Hist.," vol. iv.) It may still have been revised by Dagobert. "We find in this," says M. Guizot, "more of the Roman law, more of the royal and ecclesiastical power; its provisions are more precise, more extensive, less barbarous; it indicates a further step in the transition from the German to the Roman form of social life." ("Civil. en France," leçon 10.)

The Burgundian law, though earlier than either of these in their recensions, displays a far more advanced state of manners. The Burgundian and Roman are placed on the same footing; more is borrowed from the civil law; the royal power is more developed. This code remained in force after Charlemagne; but Hincmar says that few continued to live by it. In the Visigothic laws enacted in Spain, to the exclusion of the Roman, in 642, all the barbarous elements have disappeared; it is the work of the clergy, half ecclesiastical, half imperial.

It has been remarked by acute writers, Guizot and Troja, that the Salic law does not answer the purpose of a code, being silent on some of the most important regulations of civil society. The former adds that we often read of matters decided "secundum legem Salicam," concerning which we can find nothing in that law. He presumes, therefore, that it is only a part of their jurisprudence. Troja ("Storia d' Italia nel medio evo," v, 8), quoting Buat for the same opinion, thinks it probable that the Franks made use of the Roman law where their own was defective. It may perhaps be not less probable than either hypothesis that the judges gradually introduced principles of decision which, as in our common law, acquired the force of legislative enactment. The rules of the Salic code principally relate to the punishment or compensation of crimes; and the same will be found in our earliest Anglo-Saxon laws. The object of such written laws, with a free and barbarous people, was not to record their usages, or to lay down rules which natural equity would suggest as the occasion might arise, but to prevent the arbitrary infliction of penalties. Chapter lxii, "On Successions," may have been inserted for the sake of the novel provision about Salic lands, which could not have formed a part of old Teutonic customs.

IV, pages 84, 85.—The position of the former inhabitants, after the conquest of Gaul by the Burgundians, the Visigoths, and

the Franks, both relatively to the new monarchies and to the barbarian settlers themselves, is a question of high importance. It has, of course, engaged the philosophical school of the present day, and has led to much diversity of hypotheses. The extreme poles are occupied, one by M. Raynouard in his "Hist. du Droit Municipal," and by a somewhat earlier writer, Sir Francis Palgrave, who, following the steps of Dubos, bring the two nations, conquerors and conquered, almost to an equality, as the common subjects of a sovereign who had assumed the prerogatives of a Roman emperor; and, on the opposite side, by Signor Troja,[4] and by M. Thierry, who finds no closer analogy for their relative conditions than that of the Greeks and Turks in the days that have lately gone by. "It is no more a proof," he contends, "that the Roman natives were treated as free, because a few might gain the favour of a despotic court, than that the Christian and Jew stand on an even footing with the Mussulman, because an Eastern Sultan may find his advantage in employing some of either religion." ("Lettres sur l'Hist. de France," lett. vii.) This is not quite consistent with his language in a later work: "Sous le règne de la première race se montrent deux conditions de liberté: la liberté par excellence, qui est la condition du Franc; et la liberté du second ordre, le droit de cité romaine." ("Récits des Temps Mérovingiens," i, 242. Bruxelles, 1840.)

It is, however, as it seems to me, and as the French writers have generally held, impossible to maintain either of these theories. The Roman "conviva regis" (by which we may perhaps better understand one who had been actually admitted to the royal table, thus bearing an analogy to the Frank Antrustion, than what I have said in the text, one of a rank not unworthy of such an honour)[5] was estimated in his weregild at half the price of the barbarian Antrustion, the highest known class at the Merovingian court, and above the common allodial proprietor. But between two such landholders the same proportion subsisted; the Frank was valued twice as high as the Roman; but the Roman proprietor was set more than as much above the tributary, or semi-servile husbandman, whose nation is not distinguished by the letter of the Salic code. We have, therefore, in this notorious distinction subordination without servitude; exactly what the circumstances of the conquest, and the general

[4] La Storia di Francia sotto i rè della prima razza può dirsi non consistere che negli esempj delle oppressioni de' Franchi sopra i cittadini Romani, e della generosa protezione de' vescovi o Romani o Franchi. ("Storia d' Italia," vol. i, part v, p. 421.) This is not borne out by history. We find no oppression of Romans by Franks, though much by Frank kings. The conquerors may have been nationally insolent; but this is not recorded.

[5] I do not give this as very highly probable: conviva regis seems an odd phrase; but it may have included all the senatorial families, who evidently made a noble class among the Romans.

relation of the barbarians to the empire, would lead us to anticipate, and what our historical records unequivocally confirm. The oppression of the people, which Thierry infers from the history of Gregory of Tours, under Gontran and Chilperic, was on the part of violent and arbitrary princes, not of the Frank nation; nor did the latter by any means escape it. It is true that the civil wars of the early Merovingian kings were most disastrous, especially in Aquitaine, and of course the native inhabitants suffered most; yet this is very distinguishable from a permanent condition of servitude.

"The Romans," Sir F. Palgrave has said, "retained their own laws. Their municipal administration was not abrogated or subverted; and wherever a Roman population subsisted, the barbarian king was entitled to command them with the prerogatives that had belonged to the Roman emperors." ("Rise and Progress of the English Commonwealth," vol. i, p. 362.) In this I demur only to the word entitled, which seems designed to imply something more than the right of the sword. But this is the right, and I can discern no real evidence of any other, which Clovis, and Clotaire, and Chilperic exercised; very like, of course, to the prerogatives of the Roman emperors, since one despotism must be akin to another; and a provincial of Gaul, whose ancestors had for centuries obeyed an unlimited monarch, could not claim any better privileges by becoming the subject of a conqueror. It is universally agreed, at least I apprehend so, that the Roman, as a mere possessor, and independently of any personal dignity with which he might have been honoured, did not attend the national assemblies in the Field of March; nor had he any business at the placitum or mallus of the count among the Rachimburgii, or freeholders, who there determined causes according to their own jurisprudence, and transacted other business relating to their own nation. The kings were always styled merely "Reges Francorum":[6] whenever, in Gregory of Tours's history, the popular will is expressed, it is by the Franks; no other nation separately, nor the Franks as blended with any other nation, appear in his pages to have acted for themselves.

It must be almost unnecessary to remind the reader that the word Roman is uniformly applied, especially in the barbarian laws, to the Gaulish subjects of the empire, whose allegiance had been transferred, more or less reluctantly, but always through conquest, to the three barbarian monarchies, two of which were ultimately subverted by the Franks. But it is only in two senses

[6] One instance of an apparent exception, for leading me to which I am indebted to Mr. Spence ("Laws of Europe," p. 240), has met my eyes. Dagobert I calls himself, in an instrument found in "Vita Beati Martini, apud Duchesne," i, 655, "Rex Francorum et populi Romani princeps." The authenticity of this charter deserves to be considered. But, supposing it to be genuine, it does not go a great way toward the imperial style.

that this can be reckoned a proper appellation; one, inasmuch as privileges of Roman citizenship had been extended to the whole of Gaul by the emperors; and another, as applicable, with more correctness, to that population of Roman or Italian descent which had gradually settled in the cities. This, during so many ages, must have become not inconsiderable; the long continuance of the same legions in the province, the wealth and luxury of many cities, the comparative security, up to the close of the fourth century, from military revolution and civil war, the facility, perhaps, of purchasing lands, would naturally create a respectable class, to whose highly civilized manners the records of the fourth and fifth centuries especially bear witness.[1] The Latin language became universal in cities; and if in country villages some remains of the Celtic might linger, they have left very few traces behind.

Sismondi has, indeed, gone much too far when he infers, especially from this disuse of the old language, an almost complete extinction of the Gaulish population. And for this he accounts by their reduction to servitude, by the exactions of their new lords, and the facility of purchasing slaves in the markets of the empire (vol. i, p. 84). But such a train of events is wholly without evidence; without at least any evidence that has been alleged. We do not know that the peasantry were ever proprietors of the soil which they cultivated before the Roman invasion, but may much rather believe the contrary from the language of Cæsar, "Plebs pæne servorum habetur loco." We do not know that they fell into a worse condition afterward. We do not know that they were oppressed in a greater degree than other subjects of Rome, not surely so as to extinguish the population. We may believe that slaves were occasionally purchased, according to the usage of the empire, without denying the existence of coloni, indigenous and personally free, of whom the Theodosian code is so full. Nor is it evident why even serfs may not have been of native as easily as of foreign origin. All this is presumed by Sismondi, because the Latin language, and not the Celtic, is the basis of French. And a similar hypothesis must, by parity of reasoning, be applied to the condition of Spain during the centuries of Roman dominion. But it is assumed the more readily, through the tendency of this eminent writer to place in the worst light, what seldom can be placed in a very favourable one, the social institutions and usages of mankind. The change of language is no doubt remarkable. But we may be

[1] Salvian, in the middle of the fifth century, descants on the beauties of Aquitaine: "Adeo illic omnis admodum regio aut intertexta vineis, aut florulenta pratis, aut distincta culturis, aut consita pomis, aut amœnata lucis, aut irrigata fontibus, aut interfusa fluminibus, aut circumdata messibus erat, ut vere possessores et domini terræ illius non tam soli illius portionem quam paradisi imaginem possedisse videantur." ("De Gubernat. Dei.," lib. vii, p. 299, edit. 1611.)

deceived by laying too much stress on this single circumstance in tracing the history of nations. It is very difficult to lay down a rule as to the tendency of one language to gain ground upon another. Some appear in their nature to be aggressive; such is the Latin, and probably the Arabic. But why is it that so much of the Walachian language, and even its syntax,[8] comes from Latin, in consequence of a merely military occupation, while a more lasting possession of Britain (where flourishing colonies were filled with Roman inhabitants, and the natives borrowed in some degree the arts and manners of their conquerors, connected with them also by religion in the latter part of their dominion) did not hinder the preservation of the original Celtic idiom in Wales, with very slight infusion of Latin? Why is it that innumerable Arabic words, and even some Arabic sounds of letters, are found in the Castilian language, the language of a people foreign and hostile, while scarcely a trace is left of the Visigothic tongue, that of their fathers; so that for one word, it is said, of Teutonic origin remaining in Spain there are ten in Italy, and a hundred in France?[9] If we were to take Sismondi literally, the barbarians must have found nothing in Gaul but a Roman or Romanized aristocracy, surrounded by slaves; and these as much imported, or the offspring of importation, as the negroes in America. This is rather a humiliating origin, an illud quod dicere nolo, for the French nation. For it is the French nation that is descended from the inhabitants of Gaul at the epoch of the barbarian conquest.

We have, however, a strong ethnographical argument against this imaginary depopulation, in the national characteristics of the French. A brilliant and ingenious writer has well called our attention to the Celtic element, that under all the modifications which difference of race, political constitutions, and the stealthy progress of commerce and learning have brought in, still distinguishes the Frenchman: "La base originaire, celle qui a tout reçu, tout accepté, c'est cette jeune molle et mobile race de Gaels, brillante, sensuelle, et légère, prompte à apprendre, prompte à dédaigner, avide des choses nouvelles. Voilà l'élément primitif, l'élément perfectible." (Michelet, "Hist. de France," i, 156.) This is very good, and we can not but see the resemblance to the Celtic character. Michelet goes afterward too far, and endeavours to show that a great part of the French language is Celtic; failing wholly in his quotations from early writers, which either relate to the period immediately subsequent to the Roman conquest or to the lingua Romana rustica which ultimately became French. It is nevertheless true that a certain number of

[8] Vid. Lauriani Tentamen Criticum in linguam Walachicam. (Vienn., 1840.)

[9] "Edinburgh Review," vol. xxxi, p. 109.

Celtic words have been retained in French, as has been shown even of Visigothic by M. Fauriel. He has found three thousand words in Provençal, which are not Latin. All of these which are not Gothic, Iberian, Greek, or Arabic, may be reckoned Celtic; and though the former languages can have left few traces in northern French, we may presume the last to have been retained in a scarcely less degree than in the Provençal dialect. (Ampère, "Hist. Litt. de la France," vol. i, p. 34.) Many French monosyllables are Celtic. But if we try to read any French of the twelfth century, we shall feel, no doubt, that a vast majority of words are derived from the Latin; and it may be added that the terms of rural occupation, and generally of animals, are full as much Latin as those more familiar in towns.

The cities of Gaul were occupied probably by a more mingled population than the villages. In the cities dwelt the more ancient and wealthy families, called senators, and distinct, as far as we can see our way in a very perplexed inquiry, from the ordinary curiales, or decurions. It is true that these also are sometimes called senators; but the word has not, as Guizot observes ("Collect. des Mémoires," i, 247), in Gregory and other writers, a precise sense. Families were often elevated to the senatorial rank by the emperors, which gave their members the title of clarissimi; and these were probably meant by Gregory, in the expression è primis Galliarum senatoribus, which naturally must be rendered, "of the first Gaulish nobility." The word is several times employed by him in what seems the same sense. It is, however, also used, as Guizot and Raynouard think, for the highest class of curiales who had served municipal offices. But more will be said of this in another note.

Sismondi has remarked (i, 198) that in the lives of the saints, during the Merovingian period, most part of whom were of Roman descent, it is generally mentioned that they were of good family. The Church afforded the means of preserving their respectability; and thus (without much weight in the monarchy, and often with diminished patrimony, but in return less oppressed by taxation than under the imperial fisc, deriving also a reflected importance from the bishop when he was a Roman, and sheltered by his protection) this class of the native inhabitants held not only a free but an honourable position. Yet this was still secondary. In a free commonwealth the exclusion from political rights, by a broad line of legal separation, brings with it an indelible sense of inferiority. But this inferiority is not allowed by all our inquirers.

"The nations who were unequal before the law soon became equal before the sovereign, if not in theory yet in practice; and the children of the companions of Clovis were subjected, with

few and not very material exceptions, to the same positive dominion as the descendants of the proconsul or the senator. It is not difficult to form plausible conjectures concerning the causes of this equalization; nor are the means by which it was effected entirely concealed. Considered in relation to the Romans, the Franks, for we will continue to instance them, constituted a distinct state, but, compared to the Romans, a very small one; and the individuals composing it, dispersed over Gaul, were almost lost among the tributaries. Experience has shown that whenever a lesser or poorer dominion is conjoined, in the person of the same sovereign, to a greater or more opulent one, the minuter mass is always in the end subjugated by the larger." (" Rise and Progress of the English Commonwealth," vol. i, p. 363.)

Such is, in a few words, the view taken of the Merovingian history by a very learned writer, Sir F. Palgrave. And, doubtless, the concluding observation is just, in the terms wherein he expresses it. But there seems a fallacy in applying the word "poorer" to the Franks or any barbarian conquerors of Gaul. They were poorer before their conquest; they were richer afterward. At the battle of Hastings the balance of wealth was, I doubt not, on the side of Harold more than of William; but twenty years afterward " Doomsday Book " tells us a very different story. If an allotment was made among the Franks, or if they served themselves to land without any allotment, on either hypothesis they became the great proprietors of northern France; and on whom else did the beneficiary donations, the rewards of faithful Antrustions, generally devolve? It is perfectly consistent with the national superiority of the Franks in the sixth and seventh centuries that in the last age of the Carlovingian line, when the distinction of laws had been abolished or disused, the more numerous people should in many provinces have (not, as Sir Francis Palgrave calls it, subjugated but) absorbed the other. We find this to have been the case at the close of the Anglo-Norman period at home.

One essential difference is generally supposed to have separated the Frank from the Roman. The latter was subject to personal and territorial taxation. Such had been his condition under the empire; and whether the burden might or not be equal in degree (probably it was not such), it is not at all reasonable to believe without proof that he was ever exempted from it. It is, however, true that some French writers have assumed all territorial impositions on free landholders to have ceased after the conquest. (" Récits des Temps Méroving.," i, 268.) [10] This

[10] M. Lehuerou imputes the same theory to Montesquieu. But his words (" Espr. des Loix," xxx, 13) do not assert that the Romans might not be subject to taxation in the earlier Merovingian period; though afterward, as he supposes, this obligation was replaced by that of military service.

controversy I do not absolutely undertake to determine; but the proof evidently lies on those who assert the Roman to have been more favoured than he was under the empire, when all were liable to the land-tax, though only those destitute of freehold possessions paid the capitation or census. We can not infer such a distinction on the ground of tenure from a passage of Gregory (lib. ix, c. 30): Childebertus verò rex descriptores in Pictavos, invitante Marovio episcopo, jussit, abire; id est, Florentianum majorem domûs regiæ, et Romulfum palatii sui comitem, ut scilicet populus censum quem tempore patris functi fuerant, facta ratione innovaturæ, reddere deberet. Multi enim ex his defuncti fuerant, et ob hoc viduis orphanisque ac debilibus tributi pondus inciderat. Quod hi discutientes per ordinem, relaxantes pauperes ac infirmos, illos quos justitiæ conditio tributarios dabat, censu publico subsiderunt." These collectors were repelled by the citizens of Tours, who proved that Clotaire I had released their city from any public tribute, out of respect for St. Martin. And the reigning king acquiesced in this immunity. It may also be inferred from another passage (lib. x, c. 7) that even ecclesiastical property was not exempt from taxation, unless by special privilege, which indeed seems to be implied in the many charters conceding this immunity, and in the forms of Marculfus.[11]

It seems, however, clear that the Frank landholder, the Francus ingenuus, born to his share, according to old notions, of national sovereignty, gave indeed his voluntary donation annually to the king, but reckoned himself entirely free from compulsory tribute. We read of no tax imposed by the assemblies of the Field of March; and if the kings had possessed the prerogative of levying money at will, the monarchy must have become wholly absolute without opposition. The barbarian was distinguished by his abhorrence of tribute. Tyranny might strip one man of his possessions, banish another from his country, destroy the life of a third; the rest would at the utmost murmur in silence; but a general imposition on them as a people was a yoke under which they would not pass without resistance. I shall mention a few instances in a future note. The Roman,

[11] This note was written before I had looked at a work published in 1843 by M. Lehuerou, "Histoire des Institutions Mérovingiennes," in which, with much impartiality and erudition, he draws a line between the theories of Dubos and Montesquieu; and, upon this particular subject of taxation, clearly proves, in my opinion, that the land tax imposed under the empire continued to be levied on the Roman subjects of Clovis and the next two generations. (Vol. i, p. 271, et post.) The Franks, such as were ingenui, were originally exempt from this and all other tribute. Of this M. Lehuerou makes no doubt; nor, perhaps, has any one doubted it, except Dubos. But, under the sons and grandsons of Clovis, endeavours were made, to which I have drawn attention in a subsequent note, by those despotic princes, eager to assume the imperial prerogatives over all their subjects, to rob them of their national immunity; and a struggle of the German aristocracy ensued, which annihilated the personal authority of the sovereign. ("Hist. des Inst. Méroving.," i, 425, et post.)

on the other hand, complained doubtless of new or unreasonable taxation; but he could not avoid acknowledging a principle of government to which his forefathers had for so many ages submitted. The house of Clovis stood to him in place of the Cæsars; this part of the theory of Dubos can not be disputed. But when that writer extends the same to the Franks, as a constitutional position, and not merely referring to acts protested against as illegal, the voice of history refutes him.

Dubos has asserted, and is followed by many, that the army of Clovis was composed of but a few thousand Salian Franks. And for this the testimony of Gregory has been adduced, who informs us only that three thousand of the army of Clovis (a later writer says six thousand) were baptized with him. ("Greg. Tur.," lib. ii, c. 33.) But Clovis was not the sole chieftain of his tribe. It has been seen that he enlarged his command toward the close of his life by violent measures with respect to other kings as independent apparently as himself, and some of whom belonged to his family. Thus the Ripuarian Franks, who occupied the left bank of the Rhine, came under his sway. And besides this, the argument from the number of soldiers baptized with Clovis assumes that the whole army embraced Christianity with their king. It is true that Gregory seems to imply this. But, even in the seventh century, the Franks on the Meuse and Scheldt were still chiefly pagan, as the "Lives of the Saints" are said by Thierry to prove. We have only, it is to be remembered, a declamatory and superficial history for this period, derived, as I believe, from the panegyrical life of St. Remy, and bearing traces of legendary incorrectness and exaggeration. We may, however, appeal to other criteria.

It can not be too frequently inculcated on the reader who desires to form a general but tolerably exact notion of the state of France under the first line of kings, that he is not hastily to draw inferences from one of the three divisions, Austrasia, Neustria, and Aquitaine, to which, for a part of the period, we must add Burgundy, to the rest. The difference of language, though not always decisive, furnishes a presumption of different origin. We may therefore estimate, with some probability, the proportion of Franks settled in the monarchy on the left bank of the Rhine, by the extent of country wherein the Teutonic language is spoken, unless we have reason to suspect that any change in the boundaries of that and the French has since taken place. The Latin was certainly an encroaching language, and its daughter has in some measure partaken of the same character. Many causes are easy to assign why either might have gained ground on two dialects, the German and Flemish, contiguous to it on the eastern frontier, while we can hardly perceive one

for an opposite result. We find, nevertheless, that both have very nearly kept their ancient limits. It has been proved by M. Raoux, in the "Memoirs of the Academy of Brussels" (vol. iv, p. 411), that few towns or villages have changed their language since the ninth century. The French or Walloon followed in that early age the irregular line which, running from Calais and St. Omer to Lisle and Tournay, stretches north of the Meuse as far as Liége, and, bending thence to the southwestward, passes through Longwy to Metz. These towns speak French, and spoke it under Charlemagne, if we can say that under Charlemagne French was spoken anywhere; at least they spoke a dialect of Latin origin. The exceptions are few; but where they exist, it is from the progress of French rather than the contrary. A writer of the sixteenth century says of St. Omer that it was "Olim haud dubie mere Flandricum, deinde tamen bilingue, nunc autem in totum fere Gallicum." There has also been a slight movement toward French in the last fifty years.

The most remarkable evidence for the duration of the limit is the act of partition between Lothaire of Lorraine and Charles the Bald, in 870, whence it appears that the names of places where French is now spoken were then French. Yet most of these had been built, especially the abbeys, subsequently to the Frank conquest: "D'où on peut conclure que même dans le période franque, le langage vulgaire du grand nombre des habitans du pays, qui sont présentement Wallons, n'était pas teutonique; car on en verrait des traces dans les actes historiques et géographiques de ce temps-là" (p. 434). Nothing, says M. Michelet, can be more French than the Walloon country. ("Hist. de France," viii, 287.) He expatiates almost with enthusiasm on the praise of this people, who seem to have retained a large share of his favourite Celtic element. It appears that the result of an investigation into the languages on the Alsatian frontier would be much the same. Here, therefore, we have a very reasonable presumption that the forefathers of the Flemish Belgians, as well as of the people of Alsace, were barbarians: some of the former may be sprung from Saxon colonies planted in Brabant by Charlemagne, but we may derive the majority from Salian and Ripuarian Franks. These were the strength of Austrasia, and among these the great restorer, or rather founder, of the empire fixed his capital at Aix-la-Chapelle.

In Aquitaine, on the other hand, everything appears Roman, in contradistinction to Frank, except the reigning family. The chief difficulty, therefore, concerns Neustria; that is, from the Scheldt, or, perhaps, the Somme, to the Loire; and to this important kingdom the advocates of the two nations, Roman and Frank, lay claim. M. Thierry has paid much attention to the

subject, and come to the conclusion that, in the seventh century, the number of Frank landholders, from the Rhine to the Loire, much exceeded that of the Roman. And this excess he takes to have been increased through the seizure of Church lands in the next age by Charles Martel, who bestowed them on his German troops enlisted beyond the Rhine. The method which Thierry has pursued, in order to ascertain this, is ingenious and presumptively right. He remarked that the names of places will often indicate whether the inhabitants, or more often the chief proprietor, were of Roman or Teutonic origin. Thus Franconville and Romainville, near Paris, are distinguished, in charters of the ninth century, as Francorum villa and Romanorum villa. This is an instance where the population seems to have been of different race. But commonly the owner's Christian name is followed by a familiar termination. In that same neighbourhood proper names of German origin, with the terminations ville, court, mont, val, and the like, are very frequent. And this he finds to be generally the case north of the Loire, compared with the left bank of that river. It is, of course, to be understood that this proportion of superior landholders did not extend to the general population. For that, in all Neustrian France, was evidently composed of those who spoke the rustic Roman tongue —the corrupt language which, in the tenth or eleventh century, became worthy of the name of French; and this was the case, as we have just seen, in part of Austrasia, as Champagne and Lorraine.

We may, therefore, conclude that the Franks, even in the reign of Clovis, were rather a numerous people, including, of course, the Ripuarian as well as the Salian tribe. They certainly appear in great strength soon afterward. If we believe Procopius, the army which Theodebert, king only of Austrasia, led into Italy in 539, amounted to one hundred thousand. And, admitting the probability of great exaggeration, we could not easily reconcile this with a very low estimate of Frank numbers. But, to say the truth, I do not rely much on this statement. It is, at all events, to be remembered that the dominions of Theodebert, on each side of the Rhine, would furnish barbarian soldiers more easily than those of the Western kingdoms. Some may conjecture that the army was partly composed of Romans; yet it is doubtful whether they served among the Franks at so early a period, though we find them some years afterward under Chilperic, a Neustrian sovereign. The armies of Aquitaine, it is said, were almost wholly composed of Romans or Goths; it could not have been otherwise.

The history of Gregory, which terminates in 598, affords numerous instances of Romans in the highest offices, not merely

of trust, but of power. Such were Celsus, Amatus, Mummolus, and afterward Protadius in Burgundy, and Desiderius in Aquitaine. But in these two parts of the monarchy we might anticipate a greater influence of the native population. In Neustria and Austrasia, a Roman count, or mayor of the palace, might have been unfavourably beheld. Yet in the latter kingdom, all Frank as it was in its general character, we find, even before the middle of the sixth century, Lupus, Duke of Champagne, a man of considerable weight, and a Roman by birth; and it was the policy afterward of Brunehaut to employ Romans. But this not only excited the hostility of the Austrasian Franks, but of the Burgundians themselves; nor did anything more tend to the ruin of that ambitious woman. Despotism, through its most ready instruments, was her aim; and, when she signally failed in the attempt, the star of Germany prevailed. From that time Austrasia at least, if not Neustria, became a Frank aristocracy. We hear little more of Romans, ecclesiastics excepted, in considerable power.

If, indeed, we could agree with Montesquieu and Mably that a Roman subject might change his law and live by the Salic code at his discretion, his equality with the Franks would have been virtually recognised, since every one might place himself in the condition of the more favoured nation. And hence Mably accounts for the prevalence of the Frank jurisprudence in the north of France, since it was more advantageous to adopt it as a personal law. The Roman might become an allodial landholder, a member of the sovereign legislature in the Field of March. His weregild would be raised, and with that his relative situation in the Commonwealth; his lands would be exempt from taxation. But this theory has been latterly rejected. We can not, indeed, conceive one less consonant to the principles of the barbarian kingdoms or the general language of the laws. Montesquieu was deceived by a passage in an early capitulary, of which the best manuscripts furnish a different reading. Mably was pleased with an hypothesis which rendered the basis of the state more democratical. But the first who propagated this error, and on more plausible grounds than Montesquieu, though he ("Esprit des Loix," liv. xxviii, c. 4) seems to claim it as a discovery of his own, were Du Cange and Muratori. They were misled by an edict of the Emperor Lothaire I in 824: "Volumus ut cunctus populus Romanus interrogetur quali lege vult vivere, ut tali, quali professi fuerint vivere velle, vivant." But Savigny has proved that this was a peculiar exception of favour granted at that time to the Romans, or rather separately to each person; and that not as a privilege of the ancient population, but for the sake of the barbarians who had settled at Rome. Raynouard

is one of those who have been deceived by the more obvious meaning of this law, and adopt the notion of Mably on its authority. Were it even to bear such an interpretation, we could not draw a general inference from it. In the case of married women, or of the clergy, the liberty of changing the law of birth was really permitted. (See Savigny, i, 134, et post, English translation.)

It should, however, be mentioned that a late very learned writer, Troja, admits the hypothesis of a change of law in France, not as a right in every Roman's power, but as a special privilege sometimes conceded by the king. And we may think this conjecture not unworthy of regard, since it serves to account for what is rather anomalous—the admission of mere Romans, at an early period, to the great offices of the monarchy, and especially to that of count, which involved the rank of presiding in the Frank mallus. It is said that Romans sometimes assumed German names, though the contrary never happened; and this of itself seems to indicate a change, as far as was possible, of national connection. But it is of little service to the hypothesis of Montesquieu and Mably. Of the edict of Lothaire, Troja thinks like Savigny; but he adopts the reading of the capitulary, as quoted by Montesquieu, "Francum, aut barbarum, aut hominem qui lege Salicâ vivit," where the best manuscripts omit the second aut.

V, page 86.—This subject has been fully treated in the celebrated work by Savigny, "History of Roman Law in the Middle Ages." The diligence and fidelity of this eminent writer have been acknowledged on all sides; nor has any one been so copious in collecting materials for the history of mediæval jurisprudence, or so perspicuous in arranging them. In a few points later inquirers have not always concurred with him. But, with the highest respect for Savigny, we may say that of the two leading propositions—namely, first, the continuance of the Theodosian code, copied into the "Breviarium Aniani," as the personal law of the Roman inhabitants, both of France and Italy, for several centuries after the subjugation of those countries by the barbarians; and, secondly, the quotation of the "Pandects" and other parts of the law of Justinian by some few writers, before the pretended discovery of a manuscript at Amalfi—the former has been perfectly well known, at least ever since the publication of the glossary of Du Cange in the seventeenth century, and that of Muratori's "Dissertations on Italian Antiquities" in the next; nor, indeed, could it possibly have been overlooked by any one who had read the barbarian codes, full as they are of reference to those who followed the laws of Rome; while

the second is also proved, though not so abundantly, by several writers of the last age. Guizot, praising Savigny for his truthfulness, and for having shown the permanence of Roman jurisprudence in Europe, well asks how it could ever have been doubted. ("Civil. en France," leçon 11.)

A late writer, indeed, has maintained that the Romans did not preserve their law under the Lombards, elaborately repelling the proofs to the contrary, alleged by Muratori and Savigny. (See Troja, "Discorso della Condizione dei Romani vinti dai Longobardi," subjoined to the fourth volume of his "Storia d' Italia.") He does not admit that the inhabitants were treated by the Lombard conquerors as anything better than tributaries or coloni. Even the bishops and clergy were judged according to the Lombard law (vol. v, p. 86). The personal law did not come in till the conquest of Charlemagne, who established it in Italy. And though later, according to this writer, in its origin, the distinctions introduced by it subsisted much longer than they did in France. Instances of persons professing to live by the Lombard law are found very late in the middle ages; the last is at Bergamo, in 1388. But Bergamo was a city in which the Lombard population had predominated. (Savigny, vol. i, p. 378.)

Whatever may have been the case in Lombardy, the existence of personal law in France is beyond question. It is far more difficult to fix a date for its termination. These national distinctions were indelibly preserved in the south of France by a law of Valentinian III, copied into the "Breviarium Aniani," which prohibited the intermarriage of Romans with barbarians. This was abolished so far as to legalize such unions, with the permission of the count, by a law of the Visigoths in Spain, between 653 and 672. But such an enactment could not have been obligatory in France. Whether the Franks ever took Roman wives I can not say; we have, as far as I am aware, no instance of it in their royal family. Proofs might, perhaps, be found, with respect to private families, in the "Lives of the Saints," or, if none, presumptions to the contrary. Troja ("Storia d' Italia," p. 1204) says that St. Medard was the offspring of a marriage between a Frank and a Roman mother, before the conquest by Clovis, and that the father lived in the Vermandois. Savigny observes that the prohibition could only have existed among the Visigoths, else a woman could not have changed her law by marriage. This, however, seems rather applicable to Italy than to the north of France, where we have no proof of such a regulation. Raynouard, whose constant endeavour is to elevate the Roman population, assumes that they would have disdained intermarriage with barbarians. ("Hist. du Droit Municipal," i, 288.) But the only instance which he adduces,

strangely enough, is that of a Goth with a Frank; which, we are informed, was reckoned to disparage the former. It is very likely, nevertheless, that a Frank Antrustion would not have held himself highly honoured by an alliance with either a Goth or a Roman. Each nation had its own pride; the conqueror in arms and dominion, the conquered in polished manners and ancient renown.

"At the beginning of the ninth century," says M. Guizot, "the essential characteristic is that laws are personal and not territorial. At the beginning of the eleventh the reverse prevails, except in a very few instances" (leçon 25). But can we approximate no nearer? The territorial element, to use that favourite word, seems to show itself in an expression of the edict of Pistes, 864: "In iis regionibus quæ legem Romanam sequuntur." ("Capit. Car. Calvi.") This must be taken to mean the south of France, where the number of persons who followed any other law may have been inconsiderable, relatively to the rest, so that the name of the district is used collectively for the inhabitants. (Savigny, i, 162.) And this became the pays du droit écrit, bounded, at least in a loose sense, by the Loire, wherein the Roman was the common law down to the French Revolution, the laws of Justinian, in the progress of learning, having naturally taken place of the Theodosian. But in the same capitulary we read: "De illis qui secundum legem Romanam vivunt, nihil aliud nisi quod in iisdem continetur legibus, definimus." And the king (Charles the Bold) emphatically declares that neither that nor any other capitulary which he or his predecessors had made is designed for those who obeyed the Roman law. The fact may be open to some limitation, but we have here an express recognition of the continuance of the separate races. It seems highly probable that the interference of the bishops, still in a great measure of Roman birth, and, even where otherwise, disposed to favour Roman policy, contributed to protect the ancient inhabitants from a legislature wherein they were not represented. And this strongly corroborates the probability that the Romans had never partaken of the legislative power in the national assemblies.

In the middle of the tenth century, however, according to Sismondi, the distinction of races was lost; none were Goths, or Romans, or even Franks, but Aquitanians, Burgundians, Flemings. French had become the language of the nation (iii, 400). French must here be understood to include Provençal, and to be used in opposition to German. In this sense the assertion seems to be nearly true; and it may naturally have been the consequence that all difference of personal laws had come to an end. The feudal customs, the local usages of counties and

fiefs, took as much the lead in northern France as the Roman code still preserved in the south. The pays coûtumiers separated themselves by territorial distinctions from the pays du droit.[12] Still the instance quoted in my note, page 916, from Vaissette (where, at Carcassonne, so late as 918, we find Roman, Goth, and Frank judges enumerated), is a striking evidence that, even far to the south, the territorial principle had not yet wholly subverted those privileges of races, to which the barbarians, and also the Romans, clung as honourably distinctive.

It is only by the force of very natural prejudices, acting on both the polished and the uncivilized, that we can account for the long continuance of this inconvenient separation. If the Franks scorned the complex and wordy jurisprudence of Rome, it was just as intolerable for a Roman to endure the rude usages of a German tribe. The traditional glory of Rome, transferred by the adoption of that name to the provincials, consoled them in their subjection; and in the continuance of their law, in the knowledge that it was the guarantee of their civil rights against a litigious barbarian, though it might afford them but imperfect security against his violence, in the connection which it strengthened with the Church (for churchmen of all nations followed it), they found no trifling recommendations of this distinction from the conquerors. It seems to be proved that, in lapse of ages, each had gradually borrowed something from the other. The melting down of personal into territorial—that is, uniform law, as it can not be referred to any positive enactment or to any distinct period—seems to have been the result of such a process. The same judges, the counts and missi, appear to have decided the controversies of all the subject nations, whether among themselves or one with another. Marculfus tells us this in positive terms: "Eos recto tramite secundum legem et consuetudinem eorum regas." ("Marculf. Formulæ," lib. i, c. 8.) Nor do we find any separate judges, except the defensores of cities, who were Romans, but had only a limited jurisdiction. It was only

[12] A work which I had not seen when this note was written, "Histoire du Droit Français," by M. Laferrière (p. 85), treats at some length the origin of the customary law of France. It was not, in any considerable degree, borrowed from the barbaric codes, nor greatly, as he thinks, from the Roman law. He points out the manifold discrepancies from the former of these. But these codes appear to have been in force under Charlemagne. The feudal customs, which became the sole law on the right bank of the Loire, he refers to the ninth and two following centuries. And I suppose there can be no doubt of this. The spirit of the French customs, both territorial and personal, was wholly feudal; the Salic code had been compiled on a different motive or leading principle. This is very much what took place in England, and perhaps more rapidly, in the twelfth century; the Norman law, with its feudal principle, replaced the Anglo-Saxon.

But a Belgian writer, M. Raepsaet ("Nouveaux Mémoires de l'Académie de Bruxelles," tome iii), contends that the Salic and Ripuarian laws had authority in the Netherlands, down to the thirteenth century, for towns and for allodial proprietors. We find lex Salica in several instruments: Otho of Frisingen says, "Lege quæ Salica usque ad hæc tempora vocatur, nobilissimos Francorum adhuc uti." But this must have been chiefly as to successions.

as to civil rights, as ought to be remarked, that the distinction of personal law was maintained. The penalties of crime were defined by a law of the state. And the same must, of course, be understood as to military service.

VI, pages 87, 94.—The German dukes of the Alemanni and Bavarians belonged to once royal families: their hereditary rights may be considered as those of territorial chiefs. Again, in Aquitaine the Merovingian kings had so little authority that the counts became nearly independent. But we do not find reason, as far as I am aware, to believe any regular succession of a son to his father, in Neustria or Austrasia, under the first dynasty: much less would Charlemagne have permitted it to grow up. It could never have become an established usage, except in a monarchy too weak to maintain any of its prerogatives. Such a monarchy was that of Charles the Bald. I have said that, in the famous capitulary of Kiersi, in 877, the succession of a son to his father appears to be recognised as a known usage. M. Fauriel, on the other hand, denies that this capitulary even confirms it at all. ("Hist. de la Gaule Méridionale," iv, 383.) We both, therefore, agree against the current of French writers who take this for the epoch of hereditary succession. It seems evident to me that a usage, sufficient, in common parlance, to entitle the son to receive the honour which his father had held, is implied in this capitulary. But the object of the enactment was to provide for the contingency of a territorial government becoming vacant by death during the intended absence of the Emperor Charles in Italy; and that in cases only where the son of the deceased count should be with the army, or in his minority, or where no son survived. "It is obvious," Palgrave says, "that the law relates to the custody of the county or fief during the interval between the death of the father and the investiture of the heir." ("English Commonwealth," 392.) But the case of an heir, that is, a son—for collateral inheritance is excluded by the terms of the capitulary—being of full age and on the spot, is not specially mentioned; so that we must presume that he would have assumed the government of the county, awaiting the sovereign's confirmation on his return from the Italian expedition. The capitulary should be understood as applicable to temporary circumstances, rather than as a permanent law. But I must think that the lineal succession is taken for granted in it.[18]

[18] Si comes obierit, cujus filius nobiscum sit, filius noster cum cæteris fidelibus nostris ordinet de his qui illi plus familiares et propinquiores fuerint, qui cum ministerialibus ipsius comitatus et episcopo ipsum comitatum prævideat, usque cum nobis renuntietur. Si autem filium parvulum habuerit, iisdem cum ministerialibus ipsius comitatûs et episcopo, in cujus parochia consistit, eundem

We find that so long at least as the kings retained any power their confirmation or consent was required on every succession to an honour—that is, a county or other government—though it was very rarely refused. Guadet (" Notices sur Richer," p. 62) supposes this to have been the case even in the last reigns of the Caroline family—that is, in the tenth century—but this is doubtful, at least as to the southern dukes and counts. These honours gradually, after the accession of the house of Capet, assumed a new character, and were confounded together with benefices under the general name of fiefs of the crown. The counts, indeed, according to Montesquieu and to probability, held beneficiary lands attached to their office. (" Esprit des Loix," xxvi, 27.)

The county, it may here be mentioned, was a territorial division, generally of the same extent as the pagus of the Roman Empire. The latter appellation is used in the Merovingian period, and long afterward. The word county, comitatus, is said to be rare before 800; but the royal officer was called comes from the beginning. The number of pagi, or counties, I have not found. The episcopal dioceses were one hundred and eighteen in the Caroline period, and were frequently, but not always, coincident in extent with the civil divisions. (See Guérard, " Cartulaire de Chartres, Prolégomènes," p. 6, in " Documens Inédits," 1840.)

VII, page 89.—A reconsideration of the Merovingian history has led me to doubt whether I may not, in my earlier editions, like several others, have rather exaggerated the change in the prerogative of the French kings from Clovis to Clotaire II. Though the famous story of the vase of Soissons is not insignificant, it now seems to me that an excessive stress has sometimes been laid upon it. In the first place, there is a general objection to founding a large political theory on any anecdote, which proving false, the whole would crumble for want of a basis. This, however, is rather a general remark than intended to throw doubt upon the story told by Gregory of Tours, who, though he came so long afterward, and though there is every appearance of rhetorical exaggeration and inexactness in the details, is likely to have learned the principal fact by tradition or some lost authority.[14] But even taking the circum-

comitatum prævideat, donec ad nostram notitiam perveniat. Si vero filium non habuerit, filius noster cum cæteris fidelibus nostris ordinet, qui cum ministerialibus ipsius comitatûs et episcopo ipsum comitatum prævideat, donec jussio nostra inde fiat. Et pro hoc nullus irascatur, si eundem comitatum alteri, qui nobis placuerit, dederimus, quam illi qui eam hactenus prævidit. Similiter et de vassallis nostris faciendum est. (" Scriptores Rerum Gallicarum," vii, 701.)

[14] Since this sentence was written I have found the story of the vase of Soissons in Hincmar's " Life of St. Remi," which, as I have observed in a former note, appears to be taken from a docu-

stances exactly according to his relation, do they go much further than to inform us, what our knowledge of barbarian manners might lead any one to presume, that the booty obtained by a victory was divided among the army? Clovis was not refused the vase which he requested; the army gave their assent in terms which Gregory, we may well believe, has made too submissive; he took it without regard to the insolence of a single soldier, and revenged himself on the first opportunity. The Salian king was, I believe from other evidence, a limited one; he was obliged to consult his army in war, his chief men in peace; but the vase of Soissons does not seem to warrant us in deeming him to have been more limited than from history and analogy we should otherwise infer. If, indeed, the language of Gregory were to be trusted, the whole result would tell more in favour of the royal authority than against it. And thus Dubos, who has written on the principle of believing all that he found in history to the very letter, has interpreted the story.

Two French writers, the latter of considerable reputation, Boulainvilliers and Mably, have contributed to render current a notion that the barbarian kings, before the conquest of Gaul, enjoyed scarcely any authority beyond that of leaders of the army. And this theory has lately been maintained by two of our countrymen, whose researches have met with great approbation. "It is plain," says Mr. Allen, "the monarchical theory can not have been derived from the ancient Germans. In the most considerable of the German tribes the form of government was republican. Some of them had a chief, whom the Romans designated with the appellation of king; but his authority was limited, and in the most distinguished of their tribes the name as well as the office of king was unknown.[15] The supreme authority of the nation resided in the freemen of whom it was composed. From them every determination proceeded which affected the general interests of the community, or decided the life or death of any member of the commonwealth. The territory of the state was divided into districts, and in every district there was a chief who presided in its assemblies, and, with the assistance of the other freemen, regulated its internal concerns, and in matters of inferior importance administered justice to the inhabitants.

"This form of government subsisted among the Saxons of the

ment nearly contemporary with the saint, that is, with Clovis. And this original "Life of St. Remi," preserved only in extracts when Hincmar compiled his own biography of that famous bishop, is, in all likelihood, the basis of whatever Gregory of Tours has recorded concerning the founder of the monarchy; very rhetorical, and probably not accurate, but essentially deserving belief.

[15] This is by no means an unquestionable representation of what Tacitus has said; but the language of that historian, as has been observed in a former note, is not sufficiently perspicuous on this subject of German royalty.

Continent so late as the close of the seventh century, and probably continued in existence till their final conquest by Charlemagne. Long before that period, however, the tribes that quitted their native forests, and established themselves in the empire, had converted the temporary general of their army into a permanent magistrate, with the title of king. But that the person decorated with this appellation was invested with the attributes essential to royalty in aftertimes is utterly incredible. Freemen with arms in their hands, accustomed to participate in the exercise of the sovereign power, were not likely without cause to divest themselves of that high prerogative, and transfer it totally and inalienably to their general. Chiefs who had been recently his equals might, in consideration of his military talents, and from regard to their common interest, acquiesce in his permanent superiority as commander of their united forces; but it can not be supposed that they would gratuitously and universally submit to him as their master. There are no written accounts, it is true, of the conditions stipulated by the German warriors when they converted him into a king. But there is abundance of facts recorded by historians which show beyond a doubt that, though he might occasionally abuse his power by acts of violence and injustice, the authority he possessed by law was far from being unlimited." ("Inquiry into the Rise and Growth of Royal Prerogative," p. 11.)

It may be observed, in the first place, that Mr. Allen appeared to have combated a shadow. Few, I presume, contend for an unlimited authority of the Germanic kings, either before or after their conquests of France and England. A despotic monarchy was utterly uncongenial to the mediæval polity. Sir F. Palgrave follows in the same direction:

"When the 'three tribes of Germany' first invaded Britain, royalty, in our sense of the term, was unknown to them. Among the Teutons in general the word 'king,' probably borrowed from the Celtic tongue, though now naturalized in all the Teutonic languages, was as yet not introduced or invented. Their patriarchal rulers were their 'aldermen,' or seniors. In 'old Saxony' there was such an alderman in every pagus. Predominant or pre-eminent chieftains, whom the Romans called 'reges,' and who were often confirmed in their dominions by the Romans themselves, existed at an earlier period among several of the German tribes; but it must not be supposed that these leaders possessed any of the exalted functions and complex attributes which, according to our ideas, constitute royal dignity. A king must be invested with permanent and paramount authority. For the material points at issue are not affected by showing that one powerful chieftain might receive the complimentary title of rex

from a foreign power, or that another chieftain, with powers approaching to royalty, may not have been created occasionally, and during greater emergencies. The real question is, whether the king had become the lord of the soil, or at least the greatest landed proprietor, and the first 'estate' of the Commonwealth, endued with prerogatives which no other member of the community could claim or exercise. The disposal of the military force, the supreme administration of justice, the right of receiving taxes and tributes, and the character of supreme legislator and perpetual president of the councils of the realm, must all belong to the sovereign, if he is to be king in deed as well as in name." ("Rise and Progress of the English Commonwealth," vol. i, p. 553.)

The prerogatives here assigned to royalty as part of its definition are of so various a nature, and so indefinitely expressed, that it is difficult to argue about them. Certainly a "king in deed" must receive taxes, and dispose, though not necessarily without consent, of the military force. He must preside in the councils of the realm; but he need not be supreme legislator, if that is meant to exclude the participation of his subjects; much less need he be the lord of the soil—a very modern notion, and merely technical, if indeed it could be said to be true in any proper sense—nor even the greatest landed proprietor. "A king's a king for a' that," and we have never in England known any other.

But why do these eminent writers depreciate so confidently the powers of a Frank or Saxon king? Even if Cæsar and Tacitus are to be implicitly confided in for their own times, are we to infer that no consolidation of the German clans, if that word is a right one, had been effected in the four succeeding centuries? Are we even to reject the numerous testimonies of Latin writers during those ages, who speak of kings, hereditary chieftains, and leaders of the barbarian armies? If there is a notorious fact, both as to the Salian Franks and the Saxons of Germany, it is that each had an acknowledged royal family. Even if they sometimes chose a king not according to our rules of descent, it was invariably from one ancestor. The house of Meroveus was probably recognised before the existence of that obscure prince; and in England Hengist could boast the blood of Woden, the demigod of heroic tradition. A government by grafs or ealdormen of the gau might suit a people whose forests protected them from invasion, but was utterly incompatible with the aggressive warfare of the Franks, or of the first conquerors of Kent and Wessex. Grimm, in his excellent antiquities of "German Law," has fully treated of the old Teutonic monarchies, not always hereditary, and never absolute, but easily capable of

receiving an enlargement of power in the hands of brave and ambitious princes, such as arose in the great westward movement of Germany.

If, however, the authority of Clovis has been rated too low, it may also be questioned whether that of the next two generations, his sons and grandsons, has not been exaggerated in contrast. It is certainly true that Gregory of Tours exhibits a picture of savage tyranny in several of these sovereigns. But we are to remember that particular acts of arbitrary power, and especially the putting obnoxious persons to death, were so congenial to the whole manners of the age that they do not prove the question at issue, whether the government may be called virtually an absolute monarchy. Every Frank of wealth and courage was a despot within his sphere; but his sphere of power was a bounded one, and so, too, might be that of the king. Probably when Gontran or Fredegonde ordered a turbulent chief to be assassinated, no weregild was paid to his kindred; but his death would excite hardly any disapprobation, except among those who thought it undeserved.

Gregory of Tours, it should be kept in mind, was a Roman; he does not always distinguish the two nations, but a great part of the general oppression which we find under the grandchildren of Clovis seems to have fallen on the subject people. As to these, few are inclined to doubt that the king was truly absolute. The most remarkable instances of arbitrary power exerted upon the Franks are in the imposition of taxes. These, as has been said in another note, were repugnant to the whole genius of barbarian society. We find, however, that on the death of Theodebert, King of Austrasia, in 547, the Franks murdered one Parthenius, evidently a Roman, and a minister of the late king—"pro eo quod iis tributa antedicti regis tempore inflixesset." ("Greg. Tur.," lib. iii, c. 36.) Whether these tributes continued afterward to be paid we do not read. Chilperic, the most oppressive of his line, at a later period, in 579, laid a tax on freehold lands—"ut possessor de terra propria amphoram vini per aripennem redderet." (Id., lib. v, c. 29.) It is, indeed, possible that this affected only the Romans, though the language of the historian is general—"descriptiones novas et graves in omni regno suo fieri jussit." A revolt broke out in consequence at Limoges, but the inhabitants of that city were Romans. Chilperic put this down by the help of his faithful Antrustions—"unde multum molestus rex, dirigens de latere suo personas, immensis damnis populum afflixit, suppliciisque conterruit." Mr. Spence ("Laws of Modern Europe," p. 269) is clearly of opinion, against Montesquieu, who confines this tax to the Romans, that it comprehended the Franks also, and was in the nature of

the indiction, or land-tax, imposed on the subjects of the Roman Empire by an assessment renewed every fifteen years; and this, perhaps, on the whole, is the more probable hypothesis of the two. Mr. Spence says (p. 267) that lands subject to tribute still continued liable when in the possession of a Frank. This is possible, but he refers to texts which do not prove it.

The next passage which I shall quote is more unequivocal. The death of Chilperic exposed his instruments of tyranny, as it had Parthenius in Austrasia, to the vengeance of an oppressed people. Fredegonde, though she escaped condign punishment herself, could not screen these vile ministers: "Habebat tunc temporis secum Audonem judicem, qui ei tempore regis in multis consenserat malis. Ipse enim cum Mummolo præfecto multos de Francis, qui tempore Childeberti regis senioris ingenui fuerant, publico tributo subegit. Qui, post mortem regis Chilperici, ab ipsis spoilatus ac denudatus est, ut nihil ei, præter quod super se auferre potuit, remaneret. Domos enim ejus incendio subdiderunt; abstulissent utique et ipsam vitam, ni cum regina ecclesiam expetisset" (lib. vii, c. 15). The word ingenui, in the above passage, means the superior class—allodial landholders or beneficiaries, as distinguished from the class named lidi, who are also perhaps sometimes called tributarii, as well as the Romans, and from whom a public census, as some think, was due. We may remark here that the removing of a number of Franks from their own place as ingenui to that of tributaries was a particular act of oppression, and does not stand quite on the footing of a general law. The passage in Gregory is chiefly important as it shows that the ingenui were not legally subject to public tribute.

M. Guizot has adduced a constitution of Clotaire II in 615, as a proof that endeavours had been made by the kings to impose undue taxes. This contains the following article: "Ut ubicunque census novus impie additus est, et a populo reclamatur, justa inquisitione misericorditer emendetur" (c. 8). But does this warrant the inference that any tax had been imposed on the free-born Frank? "Census" is generally understood to be the capitation paid by the tributarii, and the words imply a local exaction rather than a national imposition by the royal authority. It is not even manifest that this provision was founded exclusively on any oppression of the crown; several other articles in this celebrated law are extensively remedial, and forbid all undue spoliation of the weak. But if we should incline to Guizot's interpretation, it will not prove, of course, the right of the kings to impose taxes on the Franks, since that to which it adverts is called census novus impie additus.

The inference which I formerly drew from the language of

the laws is inconclusive. Bouquet, in the "Recueil des Historiens" (vol. iv), admits only seven laws during the Merovingian period, differing from Baluze as to the particular sovereigns by whom several of them were enacted. Of these, the first is by Childebert I, King of Paris, in 532, according to him; by Childebert II of Austrasia, according to Baluze, which, as the date is Cologne, and several Austrasian cities are mentioned in it which never belonged to the first Childebert, I can not but think more likely. This constitution has unà cum nostris optimatibus, and convenit unà leudis nostris. And the expressions lead to two inferences: first, that the assembly of the Field of March was, in that age, annually held; secondly, that it was customary to send round to the people the determinations of the optimates in this council: "Cum nos omnes calendas Martias de quascunque conditiones unà cum optimatibus nostris pertractavimus, ad unumquemque notitiam volumus pervenire." The grammar is wretched, but such is the evident sense.

The second law, as it is called, is an agreement between Childebert and Clotaire; the first of each name according to Bouquet, the second according to Baluze. This wants all enacting words except "Decretum est." The third is an ordinance of Childebert for abolishing idolatrous rites and keeping festivals. It is an enforcement of ecclesiastical regulations, not perhaps reckoned at that time to require legislative sanction. The fourth, of Clotaire I or Clotaire II, begins "Decretum est," and has no other word of enactment. But this does not exclude the probability of consent by the leudes. Clotaire I, in another constitution, speaks authoritatively. But it will be found, on reading it, that none except his Roman subjects are concerned. The sixth is merely a precept of Gontran, directed to the bishops and judges, enjoining them to maintain the observance of the Lord's day and other feasts. The last is the edict of Clotaire II in 615, already quoted, and here we read: "Hanc deliberationem quam cum pontificibus vel tam magnis viris optimatibus, aut fidelibus nostris in synodali concilio instituimus."

After 615 no law is extant enacted in any of the Frank kingdoms before the reign of Pepin. This, however, can not of itself warrant the assertion that none were enacted which do not remain. It is more surprising, perhaps, that even a few have been preserved. The language of Childebert above cited leads to the belief that, in the sixth century, whatever we may suppose as to the next, an assembly with powers of legislation was regularly held by the Frank sovereigns. Nothing, on the whole, warrants the supposition that the three generations after Clovis possessed an acknowledged right, either of legislating for their Frank subjects or imposing taxes upon them. But after the assassination

of Sigebert, under the walls of Tournay, in 575, the Austrasian nobles began to display a steady resistance to the authority which his widow Brunehaut endeavoured to exercise in her son's name. This, after forty years, terminated in her death and in the reunion of the Frank monarchy, with a much more aristocratic character than before, under the second Clotaire. It is a revolution to which we have already drawn attention in the note on Brunehaut.

VIII, page 90.—"The existence," says Savigny, "of an original nobility as a particular patrician order, and not as a class indefinitely distinguished by their wealth and nobility, can not be questioned. It is difficult to say from what origin this distinction may have proceeded; whether it was connected with the services of religion or with the possession of the heritable offices of counts. We may affirm, however, with certainty, that the honour enjoyed was merely personal, and conferred no preponderance in the political or judicial systems" (chap. iv, p. 172, English translation). This admits all the theory to which I have inclined in the text—namely, the non-existence of a privileged order, though antiquity of family was in high respect. The eorl of Anglo-Saxon law was, it may be said, distinguished by certain privileges from the ceorl. Why could not the same have been the case with the Franks? We may answer that it is by the laws and records of those times that we prove the former distinction in England, and it is by the absence of all such proof that the non-existence of such a distinction in France has been presumed. But if the lidi, of whom we so often read, were Franks by origin, and, moreover, personally free, which, to a certain extent, we need not deny, they will be the corresponding rank to the Anglo-Saxon ceorl, superior, as, from whatever circumstances, the latter may have been in his social degree. All the Franci ingenui will thus have constituted a class of nobility; in no other sense, however, than all men of white race constitute such a class in those of the United States where slavery is abolished, which is not what we usually mean by the word. In some German nations we have, indeed, a distinct nobility of blood. The Bavarians had five families, for the death of a member of whom a double composition was paid. They had one, the Agilolfungi, whose composition was fourfold. Troja also finds proof of two classes among the Alemanns (v, 168). But we are speaking only of the Franks, a cognate people, indeed, to the Saxons and Alemanns, but not the same, and whose origin is not that of a pure single tribe. The Franks were collectively like a new people in comparison with some others of Teutonic blood. It does not, therefore, appear to me so unquestionable as to Savigny

that a considerable number of families formed a patrician order in the French monarchy, without reference to hereditary possessions or hereditary office.

A writer of considerable learning and ingenuity, but not always attentive to the strict meaning of what he quotes, has found a proof of family precedence among the Franks in the words crinosus and crinitus, employed in the Salic law and in an edict of Childebert. (Meyer, "Institut. Judiciaires," vol. i, p. 104.) This privilege of wearing long hair he supposes peculiar to certain families, and observes that crinosus is opposed to tonsoratus. But why should we not believe that all superior freemen—that is, all Franks—whose composition was of two hundred solidi, wore this long hair, though it might be an honour denied to the lidi? Gibert, in a memoir on the Merovingians ("Acad. des Inscript.," xxx, 583), quotes a passage of Tacitus, concerning the manner in which the nation of the Suevi wore their hair, from whom the Franks are supposed by him to be descended. And there is at least something remarkable in the language of Tacitus, which indicates a distinction between the royal family and other freemen, as well as between these and the servile class. The words have not been, I think, often quoted: "Nunc de Suevis dicendum est, quorum non una ut Cattorum Tencterorumque gens; majorem enim Germaniæ partem obtinent, propriis adhuc nationibus discreti, quamquam in communi Suevi dicuntur. Insigne gentis obliquare crinem, nodoque substringere. Sic Suevi a cæteris Germanis, sic Suevorum ingenui a servis separantur. In aliis gentibus, seu cognatione aliqua Suevorum, seu, quod accidit, imitatione, rarum et intra juventæ spatium, apud Suevos usque ad canitiem, horrentem capillum retro sequuntur, ac sæpe in ipso solo vertice religant; principes et ornatiorem habent." ("De Mor. German.," c. 38.) This last expression may account for the word crinitus being sometimes applied to the royal family, as it were exclusively, sometimes to the Frank nation or its freemen.[16] The references of M. Meyer are so far from sustaining his theory that they rather lead me to an opposite conclusion.

M. Naudet (in "Mémoires de l'Académie des Inscriptions," Nouvelle Série, vol. viii, p. 502) enters upon an elaborate discussion of the state of persons under the first dynasty. He distinguishes, of course, the ingenui from the lidi. But among the former he conceives that there were two classes: the former absolutely free as to their persons, valued in their weregild at

[16] The royal family seem also to have worn longer hair than the others. Childebert proposed to Clotaire, as we read in Gregory of Tours (iii, 18), that the children of their brother Clodimer should be either cropped or put to death: "quid de his fieri debeat; et utrum incisa cæsarie, ut reliqua plebs habeantur, an certè his interfectis regnum germani nostri inter nosmetipsos æqualitate habita dividatur."

200 solidi, meeting in the county mallus, and sometimes in the national assembly—in a word, the populus of the Frank monarchy; the latter valued, as he supposes, at one hundred solidi, living under the protection or mundeburde of some rich man, and though still free, and said to be ingenuili ordine servientes, not very distinguishable at present from the lidi. I do not know that this theory has been countenanced by other writers. But even if we admit it, the higher class could not properly be denominated an hereditary nobility; their privileges would be those of better fortune, which had rescued them from the dependence into which, from one cause or another, their fellow-citizens had fallen. The Franks in general are called by Guizot une noblesse en décadence; the leudes one en progrès. But he maintains that from the fifth to the eleventh age there existed no real nobility of birth. In this, however, he goes much further than Mably, who does not scruple to admit an hereditary nobility in the time of Charlemagne, and probably further than can be reasonably allowed, especially if the eleventh century is to be understood inclusively. In that century we shall see that the nobles formed a distinct order; and I am much inclined to believe that this was the case as soon as feudal tenure became general, which was at least as early as the tenth.

M. Lehuerou denies any hereditary nobility during the Merovingian period, at least, of French history: "Il n'existait donc point de noblesse dans le sens moderne du mot, puisqu'il n'y avait point d'hérédité, et puisque l'hérédité, si elle se produisait quelquefois, était purement accidentelle; mais il y avait une aristocratie mobile, changeante, variable au gré des accidents et des caprices de la vie barbare, et néanmoins en possession de véritables priviléges qu'il faut se garder de méconnaître. Cette aristocratie était plutôt celle des titres, des places, et des honneurs, que celle de la naissance, quoique celle-ci n'y fût pas étrangère. Elle était plus dans le présent, et moins dans le passé; elle empruntait plus à la puissance actuelle qu'à celle des souvenirs; mais elle ne s'en détachait pas moins nettement des couches inférieures de la population, et notamment de la foule de ceux dont la noblesse ne consistait que dans leur ingenuité." ("Inst. Caroling.," p. 452.)

IX, page 92.—The nature of benefices has been very well discussed, like everything else, by M. Guizot, in his "Essai sur l'Hist. de France," p. 120. He agrees with me in the two main positions—that benefices, considered generally, never passed through the supposed stage of grants revocable at pleasure, and that they were sometimes granted in inheritance from the sixth century downward. This, however, was rather the exception,

he supposes, than the rule. "We can not doubt that, under Charlemagne, most benefices were granted only for life" (p. 140). Louis the Debonair endeavoured to act on the same policy, but his efforts were unsuccessful. Hereditary grants became the rule, as is proved by many charters of his own and Charles the Bald. Finally he tells us, the latter prince, in 877, empowered his fideles to dispose of their benefices as they thought fit, provided it were to persons capable of serving the estate. But this is too largely expressed; the power given is to those vassals who might desire to take up their abode in a cloister; and it could only be exercised in favour of a son or other kinsman.[17] But the right of inheritance had probably been established before. Still, so deeply was the notion of a personal relation to the grantor implanted in the minds of men that it was common, notwithstanding the largest terms of inheritance in a grant, for the new tenant to obtain a confirmation from the crown. This might also be for the sake of security. And this is precisely the renewal of homage and fealty on a change of tenancy, which belonged to the more matured stage of the feudal polity.

Mr. Allen observes, with respect to the formula of Marculfus quoted in my note, p. 91: "Some authors have considered this as a precedent for the grant of an hereditary benefice. But it is only necessary to read with attention the act itself to perceive that what it creates is not an hereditary benefice, but an allodial estate. It is viewed in this light in his (Bignon's) notes on a subsequent formula (sect. 17), confirmatory of what had been done under the preceding one, and it is only from inadvertence that it could have been considered in a different point of view." ("Inquiry into Royal Prerogative," appendix, p. 47.) But Bignon took for granted that benefices were only for term of life, and consequently that words of inheritance, in the age of Marculfus, implied an allodial grant. The question is, What constituted a benefice? Was it not a grant by favour of the king or other lord? If the words used in the formula of Marculfus are inconsistent with a beneficiary property, we must give up the inference from the Treaty of Andely, and from all other phrases which have seemed to convey hereditary benefices. It is true that the formula in Marculfus gives a larger power of alienation than belonged afterward to fiefs; but did it put an end to the peculiar obligation of the holder of the benefice toward the crown? It does not appear to me unreasonable to suppose an estate so conferred to have been strictly a benefice, according to the notions of the seventh century.

[17] Si aliquis ex fidelibus nostris post obitum nostrum, Dei et nostro amore compunctus, sæculo renuntiare voluerit, et filium vel talem propinquum habuerit qui reipublicæ prodesse valeat, suos honores prout melius voluerit ei valeat placitare. ("Script. Rer. Gall.," vol. vii, p. 701.)

Subinfeudation could hardly exist to any considerable degree until benefices became hereditary. But as soon as that change took place, the principle was very natural and sure to suggest itself. It prodigiously strengthened the aristocracy, of which they could not but be aware; and they had acquired such extensive possessions out of the royal domains that they could well afford to take a rent for them in iron instead of silver. Charlemagne, as Guizot justly conceives, strove to counteract the growing feudal spirit by drawing closer the bonds between the sovereign and the subject. He demanded an oath of allegiance, as William afterward did in England, from the vassals of mesne lords. But after his death, and after the complete establishment of an hereditary right in the grants of the crown, it was utterly impossible to prevent the general usage of subinfeudation.

Mably distinguishes the lands granted by Charles Martel to his German followers from the benefices of the early kings, reserving to the former the name of fiefs. These he conceives to have been granted only for life, and to have involved, for the first time, the obligation of military service. ("Observations sur l'Hist. de France," vol. i, p. 32.) But as they were not styled fiefs so early, but only benefices, this distinction seems likely to deceive the reader; and the oath of fidelity taken by the Antrustion, which, though personal, could not be a weaker obligation after he had acquired a benefice, carries a very strong presumption that military service, at least in defensive wars, not always distinguishable from wars to revenge a wrong, as most are presumed to be, was demanded by the usages and moral sentiments of the society. We have not a great deal of testimony as to the grants of Charles Martel; but in the capitularies of Charlemagne it is evident that all holders of benefices were bound to follow the sovereign to the field.

M. Guérard ("Cartulaire de Chartres," i, 23) is of opinion that, though benefices were ultimately fiefs, in the first stage of the monarchy they were only usufructs; and the word will not be clearly found in the restrained sense during that period. "Cette différence entre deux institutions nées l'une de l'autre, quoique assez délicate, était essentielle. Elle ne pourrait être méconnue que par ceux qui considéréraient seulement, les bénéfices à la fin, et les fiefs au commencement de leur existence; alors en effet les uns et les autres se confondaient." That they were not mere usufructs, even at first, appears to me more probable.

X, page 93.—Somner says that he has not found the word feudum anterior to the year 1000; and Muratori, a still greater authority, doubts whether it was used so early. I have, however, observed the words feum and fevum, which are manifestly

corruptions of feudum, in several charters about 960. (Vaissette, "Hist. de Languedoc," tome ii, appendix, pp. 107, 128, et alibi.) Some of these fiefs appear not to have been hereditary. But, independently of positive instances, can it be doubted that some word of barbarous origin must have answered, in the vernacular languages, to the Latin beneficium? (See Du Cange, voc. Feudum.) Sir F. Palgrave answers this by producing the word lehn. ("English Commonwealth," ii, 208.) And though M. Thierry asserts ("Récits des Temps Mérovingiens," i, 245) that this is modern German, he seems to be altogether mistaken. (Palgrave, ibid.) But when Sir F. Palgrave proceeds to say, "The essential and fundamental principle of a territorial fief or feud is that the land is held by a limited or conditional estate—the property being in the lord, and the usufruct in the tenant," we must think this not a very exact definition of feuds in their mature state, however it might apply to the early benefices for life. The property, by feudal law, was, I conceive, strictly in the tenant; what else do we mean by fee-simple? Military service in most cases, and always fealty, were due to the lord, and an abandonment of the latter might cause forfeiture of the land; but the tenant was not less the owner, and might destroy it or render it unprofitable if he pleased.

Feudum Sir F. Palgrave boldly derives from emphyteusis; and, in fact, by processes familiar to etymologists—that is, cutting off the head and legs, and extracting the backbone, it may thence be exhibited in the old form, feum, or fevum. M. Thierry, however, thinks feh, that is, fee or pay, and odh, property, to be the true root. ("Lettres sur l'Hist. de France," lettre x.) Guizot inclines to the same derivation; and it is, in fact, given by Du Cange and others. The derivation of alod from all and odh seems to be analogous; and the word udaller, for the freeholder of the Shetland and Orkney Isles, strongly confirms this derivation, being only the two radical elements reversed, as I remember to have seen observed in Gilbert Stuart's "View of Society." A charter of Charles the Fat is suspected on account of the word feudum, which is at least of very rare occurrence till late in the tenth century. The great objection to emphyteusis is, that a fief is a different thing. Sir F. Palgrave, indeed, contends that an "emphyteusis" is often called a "precaria," and that the word "precaria" was a synonym of "beneficium," as beneficium was of "feudum." But does it appear from the ancient use of the words "precaria" and "beneficium" that they were convertible, as the former is said, by Muratori and Lehuerou, to have been with emphyteusis? (Murat., "Antiq. Ital. Diss.," xxxvi; Lehuerou, "Inst. Caroling.," p. 183.) The tenant by emphyteusis, whom we find in the codes of Theodosius and Jus-

tinian, was little more than a colonus, a demi-serf attached to the soil, though incapable of being dispossessed. Is this like the holder of a benefice, the progenitor of the great feudal aristocracy? How can we compare emphyteusis with beneficium without remembering that one was commonly a grant for a fixed return in value, answering to the "terræ censuales" of later times, and the latter, as the word implies, a free donation with no condition but gratitude and fidelity? The word precaria is for the most part applied to ecclesiastical property which, by some usurpation, had fallen into the hands of laymen. These afterward, by way of compromise, were permitted to continue as tenants of the Church for a limited term, generally of life, on payment of a fixed rate. Marculfus, however, gives a form in which the grantor of the precaria appears to be a layman. Military service was not contemplated in the emphyteusis or the precaria, nor were either of them perpetuities; at least this was not their common condition. Meyer derives feudum from fides, quoting Aimoin: "Leudibussuis in fide disposuit." ("Inst. Judic.," i. 187.)

XI, pages 95, 96.—M. Guizot, with the highest probability, refers the conversion of allodial into feudal lands to the principle of commendation. ("Essais sur l'Hist. de France," p. 166.) Though originally this had no relation to land, but created a merely personal tie—fidelity in return for protection—it is easy to conceive that the allodialist who obtained this privilege, as it might justly appear in an age of rapine, must often do so by subjecting himself to the law of tenure—a law less burdensome at a time when warfare, if not always defensive, as it was against the Normans, was always carried on in the neighbourhood, at little expense beyond the ravages that might attend its want of success. Raynouard has published a curious passage from the "Life of St. Gerald," a Count of Aurillac, where he is said to have refused to subject his allodial lands to the Duke of Guienne, with the exception of one farm, peculiarly situated: "Erat enim semotim, inter pessimos vicinos, longe a cæteris disparatum." His other lands were so situated that he was able to defend them. Nothing can better explain the principle which riveted the feudal yoke upon allodialists. ("Hist. du Droit Municipal," ii, 261.)

In my text, though M. Guizot has done me the honour to say, "M. Montlosier et M. Hallam en ont mieux démêlé la nature et les causes," the subject is not sufficiently disentangled, and the territorial character which commendation ultimately assumed is too much separated from the personal. The latter preceded even the conquest of Gaul, both among the barbarian invaders

themselves and the provincial subjects,[18] and was a sort of clientela;[19] but the former deserves also the name of commendation, though the Franks had a word of their own to express it. We find in Marculfus the form by which the king took an ecclesiastical person, with his property and followers, under his own mundeburde, or safeguard (lib. i, c. 44). This was equivalent to commendation, or rather another word for it; except as one rather expresses the act of the tenant, the other that of the lord. Letters of safeguard were not by any means confined to the Church. They were frequent as long as the crown had any power to protect, and revived again in the decline of the feudal system. Nor were they limited to the crown; we have the form by which the poor might place themselves under the mundeburde of the rich, still being free, "ingenuili ordine servientes." ("Formulæ Veteres Bignonii," c. 44; vide Naudet, ubi supra.) They were then even sometimes called, as the latter supposes, lidi or liti, so that a freeman, even of the higher class, might, at his option, fall, for the sake of protection, into an inferior position.

I have no hesitation in agreeing with Guizot that the conversion of allodial into feudal property was nothing more than an extension of the old commendation. It was not necessary that there should be an express surrender and regrant of the land; the acknowledgment of seigniory by the commendatus would supply the place. M. Naudet ("Nouv. Mém. de l'Acad. des Inscrip.," vol. viii) accumulates proofs of commendation; it is surprising that so little was said of it by the earlier antiquaries. One of his instances deserves to be mentioned. "Isti homines," says a writer of Charlemagne's age, "fuerunt liberi et ingenui; sed quod militiam regis non valebant exercere, tradiderunt alodos suos sancto Germano"[20] (p. 567). We may perhaps infer from this that the tenants of the Church were not bound to military

[18] M. Lehuerou has gone very deeply into the mundium, or personal safeguard, by which the inferior class among the Germans were commended to a lord, and placed under his protection, in return for their own fidelity and service. ("Institutions Carolingiennes," liv. i, ch. i, § 2.) It is a subject, as he conceives, of the highest importance in these inquiries, being, in fact, the real origin of the feudal polity afterward established in Europe; though, from the circumstances of ancient Germany, it was of necessity a personal and not a territorial vassalage. It fell in very naturally with the similar principle of commendation existing in the Roman Empire. This bold and original theory, however, has not been admitted by his contemporary antiquaries. M. Giraud and M. Mignet ("Séances et Travaux de l'Académie des Sciences Morales et Politiques," pour Novembre, 1843), especially the latter, dissent from this explication of the origin of feudal polity, which was in no degree of a domestic character. The utmost they can allow is that territorial jurisdiction was extended to feudal vassals, by analogy to that which the patron, or chief of the mundium, had exercised over those who recognised him as protector, as well as over his family and servants. There is, nevertheless, perhaps a larger basis of truth in M. Lehuerou's system than they admit, though I do not conceive it to explain the whole feudal system.

[19] Garnier has happily adduced a very ancient authority for this use of the word:

"Thais patri se commendavit; in clientelam et fidem
Nobis dedit se." ("Ter. Eun.," Act 5.)

"Origine du Gouvernement Français" (in Leber, ii, 194).

[20] It will be remarked that liberi and ingenui appear here to be distinguished; "not only free, but gentlemen."

service. "No general law," says M. Guizot ("Collect. de Mém.," i, 419), "exempted them from it; but the clergy endeavoured constantly to secure such an immunity, either by grant or by custom, which was one cause that their tenants were better off than those of laymen." The difference was indeed most important, and must have prodigiously enhanced the wealth of the Church. But after the feudal polity became established we do not find that there was any dispensation for ecclesiastical fiefs. The advantage of their tenants lay in the comparatively pacific character of their spiritual lords. It may be added that, from many passages in the laws of the Saxons, Alemanns, and Bavarians, all the "commendati" appear to have been denominated vassals, whether they possessed benefices or not. That word afterward implied a more strictly territorial limitation.

Thus, then, let the reader keep in mind that the feudal system, as it is commonly called, was the general establishment of a peculiar relation between the sovereign (not as king, but as lord) and his immediate vassals; between these again and others standing to them in the same relation of vassalage, and thus frequently through several links in the chain of tenancy. If this relation, and especially if the latter and essential element, subinfeudation, is not to be found, there is no feudal system, though there may be analogies to it, more or less remarkable or strict. But if he asks what were the immediate causes of establishing this polity, we must refer him to three alone—to the grants of beneficiary lands to the vassal and his heirs, without which there could hardly be subinfeudation; to the analogous grants of official honours, particularly that of count or governor of a district; and, lastly, to the voluntary conversion of allodial into feudal tenure, through free landholders submitting their persons and estates, by way of commendation, to a neighbouring lord or to the count of a district. All these, though several instances, especially of the first, occurred much earlier, belong generally to the ninth century, and may be supposed to have been fully accomplished about the beginning of the tenth—to which period, therefore, and not to an earlier one, we refer the feudal system in France. We say in France, because our attention has been chiefly directed to that kingdom; in none was it of earlier origin, but in some it can not be traced so high.

An hereditary benefice was strictly a fief, at least if we presume it to have implied military service; hereditary governments were not: something more, therefore, was required to assimilate these, which were far larger and more important than donations of land. And, perhaps, it was only by degrees that the great chiefs, especially in the south, who, in the decay of the Caroline race, established their patrimonial rule over extensive regions,

condescended to swear fealty, and put on the condition of vassals dependent on the crown. Such, at least, is the opinion of some modern French writers, who seem to deny all subjection during the evening of the second and dawn of the third race. But if they did not repair to Paris or Laon in order to swear fealty, they kept the name of the reigning king in their charters.

The hereditary benefices of the ninth century, or, in other words, fiefs, preserved the nominal tie, and kept France from utter dissolution. They deserve also the greater praise of having been the means of regenerating the national character, and giving its warlike bearing to the French people; not, indeed, as yet collectively, but in its separate centres of force, after the pusillanimous reign of Charles the Bald. They produced much evil and misery; but it is reasonable to believe that they prevented more. France was too extensive a kingdom to be governed by a central administration, unless Charlemagne had possessed the gift of propagating a race of Alfreds and Edwards, instead of Louis the Stammerers and Charles the Balds. Her temporary disintegration by the feudal system was a necessary consequence; without that system there would have been a final dissolution of the monarchy, and perhaps its conquest by barbarians.

XII, page 117.—M. Thierry, whose writings display so much antipathy to the old nobility of his country that they ought not to be fully trusted on such a subject, observes that the Franks were more haughty toward their subjects than any other barbarians, as is shown in the difference of weregild. From them this spirit passed to the French nobles of the middle ages, though they were not all of Frank descent. "L'excès d'orgueil attaché à longtemps au nom de gentilhomme est né en France; son foyer, comme celui de l'organization féodale, fut la Gaule du Centre et du Nord, et peut-être aussi l'Italie Lombarde. C'est de là qu'il s'est propagé dans les pays Germaniques, où la noblesse antérieurement se distinguait peu de la simple condition d'homme libre. Ce mouvement créa, par-tout où il s'étendit, deux populations, et comme deux nations, proprement distinctes." ("Récits des Temps Mérovingiens," i, 250.)

The feudal principle was essentially aristocratic, and tended to enhance every unsocial and unchristian sentiment involved in the exclusive respect for birth. It had, of course, its countervailing virtues, which writers of M. Thierry's school do not enough remember. But a rural aristocracy in the meridian of feudal usages was insulated in the midst of the other classes of society far more than could ever happen in cities, or in any period of an advanced civilization. "Never," says Guizot, "had the primary social molecule been so separated from other similar

molecules; never had the distance been so great between the simple and essential elements of society." The châtelain, amid his machicolated battlements and massive gates with their iron portcullis, received the vavassor, though as an inferior, at his board; but to the roturier no feudal board was open; the owner of a "terre censive," the opulent burgess of a neighbouring town, was as little admitted to the banquet of the lord as he was allowed to unite himself in marriage to his family.

"Nec Deus hunc mensa, Dea nec dignata cubili est."

Pilgrims, indeed, and travelling merchants, may, if we trust romance, have been always excepted. Although, therefore, some of Guizot's phrases seem overcharged, since there was, in fact, more necessary intercourse between the different classes than they intimate, yet that of a voluntary nature, and what we peculiarly call social, was very limited. Nor is this surprising when we recollect that it has been so till comparatively a recent period.

Guizot has copied a picturesque description of a feudal castle in the fourteenth century from Monteil's "Histoir des Français des divers Etats aux cinq derniers Siècles." It is one of the happiest passages in that writer, hardly more distinguished by his vast reading than by his skill in combining and applying it, though sometimes bordering on tediousness by the profuse expenditure of his commonplace-books on the reader:

"Représentez vous d'abord une position superbe, une montagne escarpée, hérissée de rochers, sillonée de ravins et de précipices; sur le penchant est le château. Les petites maisons qui l'entourent enfont ressortir la grandeur; l'Indre semble s'écarter avec respect; elle fait fait un large demi-cercle à ses pieds.

"Il faut voir ce château lorsqu'au soleil levant ses galéries extérieures reluisent des armures de ceux qui font le guet, et que ses tours se montrent toutes brillantes de leurs grandes grilles neuves. Il faut voir tous ces hauts bâtiments qui remplissent de courage ceux qui les défendent, et de frayeur ceux qui seraient tentés de les attaquer.

"La porte se présente toute couverte de têtes de sangliers ou de loups, flanquée de tourelles et couronnée d'un haut corps de garde. Entrez-vous? trois encientes, trois fosses, trois pont-levis à passer; vous vous trouverez dans la grande cour carrée où sont les citernes, et à droite ou à gauche les écuries, les poulaillers, les colombiers, les remises. Les caves, les souterrains, les prisons sont par dessous; par dessus sont les logements, les magasins, les lardoirs ou saloirs, les arsenaux. Tous les combles sont bordés des mâchicoulis, des parapets, des chemins le ronde, des guérites. Au milieu de la tour est le donjon, qui renferme

les archives et le trésor. Il est profondement fossoyé dans tout son pourtour, et on n'y entre que par un pont presque toujours levé; bien que les murailles aient, comme celles du château, plus de six pieds d'épaisseur, il est revêtu jusqu'à la moitié de sa hauteur, d'une chemise, ou second mur, en grosses pierres de taille.

"Ce château vient d'être refait à neuf. Il y a quelque chose de léger, de frais, que n'avaient pas les châteaux lourds et massifs des siècles passés." ("Civilis. en France," leçon 35.)

And this was true; for the castles of the tenth and eleventh centuries wanted all that the progress of luxury and the cessation, or nearly such, of private warfare had introduced before the age to which this description refers; they were strongholds, and nothing more; dark, small, comfortless, where one thought alone could tend to dispel their gloom, that life and honour, and what was most valuable in goods, were more secure in them than in the champaign around.

XIII, page 120.—M. Guizot has declared it to be the most difficult of questions relating to the state of persons in the period from the fifth to the tenth century, whether there existed in the countries subdued by the Germans, and especially by the Franks, a numerous and important class of freemen, not vassals either of the king or any other proprietor, nor any way dependent upon them, and with no obligation except toward the state, its laws, and magistrates. ("Essais sur l'Hist. de France," p. 232.) And this question, contrary to almost all his predecessors, he inclines to decide negatively. It is, indeed, evident, and is confessed by M. Guizot, that in the ages nearest to the conquest such a class not only existed, but even comprised a large part of the nation. Such were the owners of sortes or of terra Salica, the allodialists of the early period. It is also agreed, as has been shown in another place, that toward the tenth century the number of these independent landholders was exceedingly diminished by territorial commendation—that is, the subjection of their lands to a feudal tenure. The last of these changes, however, can not have become general under Charlemagne, on account of the numerous capitularies which distinguish those who held lands of their own, or allodia, from beneficiary tenants. The former, therefore, must still have been a large and important class. What proportion they bore to the whole nation at that or any other era it seems impossible to pronounce; and equally so to what extent the whole usage of personal commendation, contradistinguished from territorial, may have reached. Still allodial lands, as has been observed, were always very common in the south of France, to which Flanders might be added. The strength of the feudal

tenures, as Thierry remarks, was between the Somme and the Loire. ("Récits des Temps Mérovingiens," i, 245.) These allodial proprietors were evidently freemen. In the law of France allodial lands were always noble, like fiefs, till the reformation of the Coûtume de Paris in 1580, when "aleux roturiers" were for the first time recognised. I owe this fact, which appears to throw some light on the subject of this note, to Laferrière, "Hist. du Droit Français," p. 129. But, perhaps, this was not the case in Flanders, which was an allodial country: "La maxime française, nulle terre sans seigneur, n'avait point lieu dans les Pays-Bas. On s'en tenait au principe de la liberté naturelle des biens, et par suite à la nécessité d'en prouver la sujétion ou la servitude; aussi les biens allodiaux étaient très nombreux, et rappelaient toujours l'esprit de liberté que les Belges ont aimé et conservé tant à l'égard de leurs biens que de leurs personnes." ("Mém. de l'Acad. de Bruxelles," vol. iii, p. 16.) It bears on this that in all the customary law of the Netherlands no preference was given to sex or primogeniture in succession (p. 21).

But there were many other freemen in France, even in the tenth century, if we do not insist on the absolute and insulated independence which Guizot requires. "If we must understand," says M. Guérard ("Cartulaire de Chartres," p. 34), "by freemen those who enjoyed a liberty without restriction—that is, who, owing no duties or service to any one, could go and settle wherever they pleased—they would not be found very numerous in our chartulary during the pure feudal regimen. But if, as we should, we comprehend under this name whoever is neither a noble nor a serf, the number of people in this intermediate condition was very considerable." And of these he specifies several varieties. This was in the eleventh century, and partly later, when the conversion of allodial property had been completed.

Savigny was the first who proved the Arimanni of Lombardy to have been freemen, corresponding to the Rachimburgii of the Franks, and distinguished both from bondmen and from those to whom they owed obedience. Citizens are sometimes called Arimanni. The word occurs, though very rarely, out of Italy (vol. i, p. 176, English translation). Guizot includes among the Arimanni the leudes or beneficiary vassals. (See, too, Troja, v, 146, 148.) There seems, indeed, no reason to doubt that vassals, and other commendati, would be counted as Arimanni. Neither feudal tenure nor personal commendation could possibly derogate from a free and honourable status.

XIV, page 121.—These names, though in a general sense occupying similar positions in the social scale, denote different

persons. The coloni were Romans, in the sense of the word then usual—that is, they were the cultivators of land under the empire, of whom we find abundant notice both in the Theodosian code and that of Justinian.[21] An early instance of this use of the word occurs in the "Historiæ Augustæ Scriptores." Trebellius Pollio says, after the great victory of Claudius over the Goths, where an immense number of prisoners was taken, "Factus miles barbarus ac colonus ex Gotho"—an expression not clear, and which perplexed Salmasius. But it may perhaps be rendered, the barbarians partly entered the legions, partly cultivated the ground, in the rank of coloni. It is thus understood by Troja (ii, 705). He conceives that a large proportion of the coloni, mentioned under the Christian emperors, were barbarian settlers (iii, 1074). They came in the place of prædial slaves, who, though not wholly unknown, grew less common after the establishment of Christianity. The Roman colonus was free; he could marry a free woman, and have legitimate children; he could serve in the army, and was capable of property; his peculium, unlike that of the absolute slave, could not be touched by his master. Nor could his fixed rent or duty be enhanced. He could even sue his master for any crime committed with respect to him or for undue exaction. He was attached, on the other hand, to the soil, and might in certain cases receive corporal punishment. (Troja, iii, 1072.) He paid a capitation tax or census to the state, the frequent enhancement of which contributed to that decline of the agricultural population which preceded the barbarian conquest. Guizot, in whose thirty-seventh lecture on the "Civilization of France" the subject is well treated, derives the origin of this state of society from that of Gaul before the Roman conquest. But since we find it in the whole empire, as is shown by many laws in the code of Justinian, we may look on it perhaps rather as a modification of ancient slavery, unless we suppose all the coloni, in this latter sense of the word,[22] to have been originally barbarians, who had received lands on condition of remaining on them. But this, however frequent, seems a basis not quite wide enough for so extensive a tenure. Nor need we believe that the coloni were always raised from slavery; they might have descended into their own order, as well as risen to it. It appears by a passage in Salvian, about the middle of the fifth century, that many freemen had been compelled to fall into this condition; which confirms, by analogy, the supposition above mentioned of M. Naudet, as to a similar degradation of a part of the Franks themselves after the conquest. It was an in-

[21] See "Cod. Theod.," l. v, tit. 9, with the copious Paratitlon of Gothofred. ("Cod. Just.," xi, tit. 47 et alibi.)

[22] The colonus of Cato and other classical authors was a free tenant or farmer, as has been already mentioned.

ferior species of commendation or vassalage, or, more strictly, an analogous result of the state of society.

The forms of Marculfus, and all the documents of the following ages, furnish abundant proofs of the continuance of the coloni in this middle state between entire freedom and servitude. And these were doubtless reckoned among the "tributarii" of the Salic law, whose composition was fixed at forty-five solidi; for a slave had no composition due to his kindred; he was his master's chattel, and to be paid for as such. But the tributary was not necessarily a colonus. All who possessed no lands were subjected by the imperial fisc to a personal capitation. And it has appeared to us that the Romans in Gaul continued regularly to pay this under the house of Clovis. To these Roman tributaries the barbarian lidi seem nearly to have corresponded. This was a class, as has been already said, not quite freeborn; so that "Francus ingenuus" was no tautology, as some have fancied, yet far from slaves without political privileges or rights of administering justice in the county court, like the Rachimburgii, and so little favoured that, while the Frank accused of a theft—that is, I presume, taken in the fact—was to be brought before his peers, the lidus, under the name of "debilior persona," which probably included the Roman tributary, was to be hanged on the spot. Throughout the Salic and Ripuarian codes the ingenuus is opposed both to the lidus and to the servus, so that the threefold division is incontestable. It corresponds in a certain degree to the edelingi, frilingi, and lazzi, or the eorl, ceorl, and thrall of the Northern nations (Grimm, "Deutsche Rechts Alterthümer," p. 306 et alibi), though we do not find a strict proportion in the social state of the second order in every country. The "coloni partiarii," frequently mentioned in the Theodosian code, were métayers; and M. Guérard says that lands were chiefly held by such in the age of Charlemagne and his family. ("Cart. de Chartres," i, 109.) The demesne lands of the manor, however, were never occupied by coloni, but by serfs or domestic slaves.

XV, page 122.—The poor early felt the necessity of selling themselves for subsistence in times of famine. "Subdiderunt se pauperes servitio," says Gregory of Tours, A. D. 585, "ut quantulumcunque de alimento porrigerent" (lib. vii, c. 45). This long continued to be the practice; and probably the remarkable number of famines which are recorded, especially in the ninth and eleventh centuries, swelled the sad list of those unhappy poor who were reduced to barter liberty for bread. Mr. Wright, in the thirtieth volume of the "Archæologia" (p. 223), has extracted an entry from an Anglo-Saxon manuscript, where a lady,

about the time of the conquest, manumits some slaves, "whose heads," as it is simply and forcibly expressed, "she had taken for their meat in the evil days." Evil, indeed, were those days in France, when out of seventy-three years, the reigns of Hugh Capet and his two successors, forty-eight were years of famine. Evil were the days for five years from 1015, in the whole Western world, when not a country could be named that was not destitute of bread. These were famines, as Radulfus Glaber and other contemporary writers tell us, in which mothers ate their children, and children their parents; and human flesh was sold, with some pretence of concealment, in the markets. It is probable that England suffered less than France; but so long and frequent a scarcity of necessary food must have affected, in the latter country, the whole organic frame of society.

It has been a very general opinion that during the lawlessness of the ninth and tenth centuries, the aristocratic element of society continually gaining ground, the cultivators fell into a much worse condition, and either from freemen became villeins, or, if originally in the order of tributaries, became less and less capable of enjoying such personal rights as that state implied; that they fell, in short, almost into servitude. "Dans le commencement de la troisième race," says Montesquieu, "presque tout le bas peuple était serf" (lib. xxviii, c. 45). Sismondi, who never draws a favourable picture, not only descants repeatedly on this oppression of the commonalty, but traces it by the capitularies. "Les loix seules nous donnent quelque indication d'une révolution importante à laquelle la grande masse du peuple fut exposée à plusieurs reprises dans toute l'étendue des Gaules—révolution qui, s'étant opérée sans violence, n'a laissé aucune trace dans l'histoire, et qui doit cependant expliquer seule les alternatives de force et de faiblesse dans les états du moyen age. C'est le passage des cultivateurs de la condition libre à la condition servile. L'esclavage étant une fois introduite et protégée par les loix, la conséquence de la prospérité, de l'accroissement des richesses devait être toujours la disparition de toutes les petites propriétés, la multiplication des esclaves, et la cessation absolue de tout travail qui ne serait pas fait par des mains serviles." ("Hist. des Français," vol. ii, p. 273.) Nor should we have believed, from the general language of historical antiquaries, that any change for the better took place till a much later era. We know, indeed, from history that, about the year 1000, the Norman peasantry, excited by oppression, broke out into a general and well-organized revolt, quelled by the severest punishments. This is told at some length by Wace, in the "Roman de Rou." And every inference from the want of all law except what the lords exercised themselves, from the strength of their castles, from

the fierceness of their characters, from the apparent inability of the peasants to make any resistance which should not end in greater sufferings, converges to the same result.

It is not, therefore, without some surprise that, in a recent publication, we meet with a totally opposite hypothesis on this important portion of social history. The editor of the "Cartulaire de Chartres" maintains that the peasantry, at the beginning of the eleventh century, enjoyed rights of property and succession which had been denied to their ancestors; that the movement from the ninth century had been upward; so that, during that period of anarchy which we presume to have been exceedingly unfavourable to their privileges, they had in reality, by force, usage, or concession, gained possession of them. They could not, indeed, leave their lands, but they occupied them subject to known conditions.

The passage wherein M. Guérard, in a concise and perspicuous manner, has given his own theory as to the gradual decline of servitude deserves to be extracted; but I regret very much that he refers to another work, not by name, and unknown to me, for the full proof of what has the air of an historical paradox. With sufficient proof every paradox loses its name; and I have not the least right, from any deep researches of my own, to call in question the testimony which has convinced so learned and diligent an inquirer.

"La servitude, comme je l'ai exposé dans un autre travail, alla toujours chez nous en s'adoucissant jusqu'à ce qu'elle fut entièrement abolie à la chute de l'ancien régime: d'abord c'est l'esclavage à-peu-près pur, qui réduisait l'homme presque à l'état de chose, et qui le mettait dans l'entière dépendance de son maître. Cette période peut être prolongée jusqu'après la conquête de l'empire d'Occident par les barbares. Depuis cette époque jusques vers la fin du règne de Charles-le-Chauve, l'esclavage proprement dit est remplacé par la servitude, dans laquelle la condition humaine est reconnue, respectée, protégée, si ce n'est encore d'une manière suffisante, par les loix civiles, au moins plus efficacement par celles de l'Église et par les mœurs sociales. Alors le pouvoir de l'homme sur son semblable est contenu généralement dans certains limites; un frein est mis d'ordinaire à la violence; la règle et la stabilité l'emportent sur l'arbitraire: bref, la liberté et la propriété pénètrent par quelque endroit dans la cabane du serf. Enfin, pendant le désordre d'où sortit triomphant le régime féodal, le serf soutient contre son maître la lutte soutenue par le vassal contre son seigneur, et par les seigneurs contre le roi. Le succès fut le même de part et d'autre; l'usurpation des tenures serviles accompagna celle des tenures libérales, et l'appropriation territoriale ayant eu lieu

partout, dans le bas comme dans le haut de la société, il fut aussi difficile de déposséder un serf, de son manse qu'un seigneur de son bénéfice. Dès ce moment la servitude fut transformée en servage; le serf, ayant retiré sa personne et son champ des mains de son maître, dut à celui-ci non plus son corps ni son bien, mais seulement une partie de son travail et de ses revenus. Dès ce moment il a cessé de servir; il n'est plus en réalité qu'un tributaire.

" Cette grande révolution, qui tira de son état abject la classe la plus nombreuse de la population, et qui l'investit de droits civils, lorsque auparavant elle ne pouvait guère invoquer en sa faveur que les droits de l'humanité, n'avait pas encore été signalée dans notre histoire. Les faits qui la démontrent ont été développé dans un autre travail que je ne puis reproduire ici; mais les traces seules qu'elle a laissées dans notre Cartulaire sont assez nombreuses et assez profondes pour la faire universellement reconnaître. Elle était depuis long-temps consommée, lorsque le moine rédigeait, dans la seconde moitié du XIe. siècle, la première partie du présent recueil, et lorsqu'il déclarait que les anciens rôles (écrits au IXe.) conservés dans les archives de l'Abbaye, n'accordent aux paysans ni les usages ni les droits dont ils jouissant actuellement. Mais ses paroles méritent d'être répétées: ' Lectori intimare curavi,' dit-il dans sa préface, ' quod ea quæ primo scripturus sum a præsenti usu admodum discrepare videntur; nam rolli conscripti ab antiquis et in armario nostro nunc reperti, habuisse minimi ostendunt illius temporis rusticos has consuetudines in reditibus quas moderni rustici in hoc tempore dinoscuntur habere, neque habent vocabula rerum quas tunc sermo habebat vulgaris.' Ainsi non seulement les choses, mais encore les noms, tout était changé." (Prolégomènes à la " Cartulaire de Chartres," p. 40.)

The characteristic of the villein, according to Beaumanoir, in the thirteenth century, that his obligations were fixed in kind and degree, would thus appear to have been as old as the eleventh. Many charters of the tenth and eleventh centuries are adduced by M. Guérard, wherein, as he informs us, " On s'efforce de se soustraire à la violence, et d'y substituer les conventions à l'arbitraire; la règle et la mesure tendent à s'introduire partout et jusques dans les extortions memes " (p. 109). But this principle of limited rent was also that of the Roman system with respect to the coloni before the conquest of Gaul by Clovis. Nor do we know that it was different afterward. No law at least could have effected it; for the Roman law, by which the coloni were ruled, underwent no change.

M. Guérard seems hardly to have taken a just view of the status of the Roman tributary or colonus: " Nous avons dit que

les personnes de condition servile s'étaient appropriés leurs bénéfices. Ce que vient encore nous confirmer dans cette opinion, c'est le changement qu'on observe généralement dans la condition des terres depuis le déclin du xe siècle. La terre, après avoir été cultivée dans l'antiquité par l'esclave au profit de son maître, le fut ensuite par un espèce de fermier non libre qui partageait avec le propriétaire, ou qui faisait les fruits siens, moyennant certains cens et services, auxquels il était obligé envers lui: c'est l'état qui nous est représenté par le Polyptyque d'Irminon, au temps de Charlemagne, et qui dura encore un siècle et demi environ après la mort de ce grand prince. Puis commence une troisième période, pendant laquelle le propriétaire, n'est plus que seigneur, tandis que le tenancier est devenu lui-même propriétaire, et paie, non plus de fermages, mais seulement des droits seigneuriaux. Ainsi, d'abord obligations d'un esclave envers un maître ensuite obligations d'un fermier non libre envers un propriétaire; enfin, obligations d'un propriétaire non libre envers un seigneur. C'est à la dernière période que nous sommes parvenus dans notre Cartulaire. Les populations s'y montrent en jouissance du droit de propriéte, et ne sont soumises, à raison des possessions, qu'à de simples charges féodales."

It may be observed upon this that the colonus was a free man, whether he divided the produce with his lord, like the métayer of modern times, or paid a certain rent; and, secondly, that, in what he calls the third period, the tenant, if he was a villein or homme de poote, could not possibly be called "lui-même propriétaire"; nor were his liabilities feudal, but either a moneyrent or personal service in labour, which can not be denominated feudal without great impropriety.

"Il est vrai," he proceeds, "que ces charges sont encore lourdes et souvent accablantes, et que les biens ne sont pas plus que les personnes entièrement francs et libres; ni suffisamment à l'abri de l'arbitraire et de la violence; mais la liberté, acquise de jour en jour à l'homme, se communiquait de plus en plus à la terre. Le paysan étant propriétaire, il ne lui restait qu'à dégréver et affranchir la propriété. C'est à cet œuvre qu'il travaillera désormais avec persévérance et de toutes ses forces, jusqu'à ce qu'il ait enfin obtenu de ne supporter d'autres charges que celles qui convienent à l'homme libre, et qui sont uniquement fondées sur l'utilité commune."

In this passage the tenant is made much more to resemble the free socager of England than the villein or homo postatis of Pierre des Fontaines or Beaumanoir. This latter class, however, was certainly numerous in their age, and could hardly have been less so some centuries before. These were subject to so many onerous restrictions, independent of their compulsory resi-

dence on the land, and independently also of their want of ability to resist undue exactions, that they were always eager to purchase their own enfranchisement. Their marriages were not valid without the lord's consent, till Adrian IV, in the twelfth century, declared them indissoluble. A freeman marrying a serf became one himself, as did their children. They were liable to occasional as well as regular demands—that is, to tallages—sometimes in a very arbitrary manner. It was probably the less frequency of such demands, among other reasons, that rendered the condition of ecclesiastical tenants more eligible than that of others. Manumissions of serfs by the Church were very common; and, indeed, the greater part that have been preserved, as may be expected, come from ecclesiastical repositories. It is observed in my text that the English clergy are said to have been slow in liberating their villeins. But a villein in England was real property; and I conceive that a monastery could not enfranchise him, at least without the consent of some superior authority, any more than it could alienate its lands. The Church were not generally accounted harsh masters.

XVI, pages 135, 136.—There would seem naturally little doubt that majorum can mean nothing but the higher classes of clergy and laity, exclusive of parish priests and ordinary freemen, were it not that a part of these very majores are afterward designated by the name minores. Who, it may be asked, could be the majores clerici, except prelates and abbots? And of these, how could one be so inferior in degree to another as to be reckoned among minores? It may perhaps be answered that there was nevertheless a difference of importance, though not of rank. Guizot translates majores "les grands," and minores "les moins considérables." But upon this construction, which certainly is what the words fairly bear, none but a class denominated majores, relatively to the rest of the nation, were members of the national council. I think, nevertheless, that Guizot, on any hypothesis, has too much depreciated the authority of these general meetings, wherein the capitularies of Charlemagne were enacted. Grant, against Mably, that they were not a democratic assembly; still were they not a legislature? "Lex consensu fit populi et constitutione regis." There is our own statute language; but does it make Parliament of no avail? "En lui (Charlemagne) réside la volonté et l'impulsion; c'est de lui que toute émane pour revenir à lui." ("Essais sur l'Hist. de France," p. 323.) This is only to say that he was a truly great man, and that his subjects were semi-barbarians, comparatively unfit to devise methods of ruling the empire. No one can doubt that he directed everything. But a weaker sovereign soon found these rude

nobles an overmatch for him. It is, moreover, well pointed out by Sir F. Palgrave that we find instances of petitions presented by the lay or spiritual members of these assemblies to Charlemagne, upon which capitularies or edicts were afterward founded. ("English Commonwealth," ii, 411.) It is to be inferred, from several texts in the capitularies of Charlemagne and his family, that a general consent was required to their legislative constitutions, and that without this a capitulary did not become a law. It is not, however, quite so clear in what method this was testified; or rather two methods appear to be indicated. One was that above described by Hincmar, when the determination of the seniores was referred to the minores for their confirmation: "interdum pariter tractandum, et non ex potestate sed ex proprio mentis intellectu vel sententiâ confirmandum." The point of divergence between two schools of constitutional antiquaries in France is on the words ex potestate. Mably, and others whom I have followed, say "not by compulsion," or words to that effect. But Guizot renders the words differently: "Quelquefois on délibérait aussi, et les confirmaient, non par un consentement formel, mais par leur opinion, et l'adhésion de leur intelligence." The Latin idiom will, I conceive, bear either construction. But the context, as well as the analogy of other authorities, inclines me to the more popular interpretation, which, though the more popular, does not necessarily carry us beyond the word majores, taking that as descriptive of a numerous aristocracy.

If, indeed, we are so much bound by the majorum in this passage of Hincmar as to take for merely loose phrases the continual mention of the populus in the capitularies, we could not establish any theory of popular consent in legislation from the general placita held almost every May by Charlemagne. They would be conventions of an aristocracy; numerous indeed, and probably comprehending by right all the vassals of the crown, but excluding the freemen or petty allodialists, not only from deliberating upon public laws, but from consenting to them. We find, however, several proofs of another method of obtaining the ratification of this class—that is, of the Frank people. I do not allude to the important capitulary of Louis (though I can not think that M. Guizot has given it sufficient weight), wherein the count is directed to bring twelve Scabini with him to the imperial placitum, because we are chiefly at present referring to the reign of Charlemagne; and yet this provision looks like one of his devising. The scheme to which I refer is different and less satisfactory. The capitulary determined upon by a national placitum was sent round to the counts, who were to read it in their own mallus to the people, and obtain their confirmation. Thus in 803, "Anno tertio clementissimi domini nostri Karoli

Augusti, sub ipso anno hæc facta capitula sunt, et consignata Stephano comiti, ut hæc manifesta faceret in civitate Parisiis, mallo publico, et illa legere faceret coram Scabiniis, quod ita et fecit. Et omnes in uno consenserunt, quod ipsi voluissent omni tempore observare usque in posterum. Etiam omnes Scabinii, Episcopi, Abbates, Comites manu propria subter signaverunt." ("Rec. des Hist.," v, 663.) No text can be more perspicuous than this; but several other proofs might be given, extending to the subsequent reigns.

Sir F. Palgrave is, perhaps, the first who has drawn attention to this scheme of local sanction by the people; though I must think that he has somewhat obscured the subject by supposing the malli, wherein the capitulary was confirmed, to have been those of separate nations constituting the Frank Empire, instead of being determined by the territorial jurisdiction of each count. He gives a natural interpretation to the famous words, "Lex consensu populi fit, constitutione regis." The capitulary was a constitution of the king, though not without the advice of his great men; the law was its confirmation by the nation collectively, in the great placitum of the Field of March, or by separate consent and subscription in each county.

We are not, however, to be confident that this assent of the people in their county courts was virtually more than nominal. A little consideration will show that it could not easily have been otherwise, except in the strongest cases of unpopular legislation. No Scabini or Rachimburgii in one county knew much of what passed at a distance; and dissatisfaction must have been universal before it could have found its organ in such assemblies. Before that time arrived rebellion was a more probable effect. One capitulary, of 823, does not even allude to consent: "In suis comitatibus coram omnibus relegant, ut cunctis nostra ordinatio et voluntas nota fieri possit." But we can not set this against the language of so many other capitularies, which imply a formal ratification.

XVII, page 160.—The court of the palace possessed a considerable jurisdiction from the earliest times. We have its judgments under the Merovingian kings. Thus in a diploma of Clovis III, A. D. 693, dated at Valenciennes: "Cum ad universorum causas audiendas vel recta judicia terminanda resideremus." ("Rec. des Hist.," iv, 672.) Under the house of Charlemagne it is fully described by Hincmar in the famous passage above mentioned. It was not so much in form a court of appeal as one acting by the sovereign's authority, to redress the oppression of the subject by inferior magistrates. Mr. Allen has well rejected the singular opinion of Meyer, that an erroneous or

corrupt judgment of the inferior court was not reversible by this royal tribunal, though the judges might be punished for giving it. ("Inquiry into Royal Prerogative," appendix, p. 29.) Though, according to what is said by M. Beugnot, the appeal was not made in regular form, we can not doubt that, where the case of injury by the inferior judge was made out, justice would be done by annulling his sentence. The emperor or king often presided here; or, in his absence, the count of the palace. Bishops, counts, household officers, and others constituted this court, which is not to be confounded with that of the seneschal, having only a local jurisdiction over the domains of the crown, and which did not continue under the house of Capet. (Beugnot, "Régistres des Arrêts," vol. i, pp. 15, 18, in "Documens Inédits," 1839.)

This tribunal, the court of the palace, was not founded upon any feudal principle; and when the right of territorial justice and the subordination of fiefs came to be thoroughly established, it ought, according to analogy, to have been replaced by one wherein none but the great vassals of France should have sat. Such, however, was not the case. This is a remarkable anomaly, and a proof that the spirit of monarchy was not wholly extinguished. For, weak as was the crown under the first Capets, their court, though composed of persons by no means the peers of all who were amenable to it, gave several judgments affecting some considerable feudatories, such as the Count of Anjou under Robert. (Id., p. 22.) No court composed only of great vassals appears in the eleventh or twelfth centuries; no notion of judicial subordination prevailed; the vassals of the crown sat with those of the duchy of France; and latterly even clerks came in as assessors or advisers, though without suffrage (p. 31). But an important event brought forward, for the first time, the true feudal principle. This was the summons of John, as Duke of Normandy, to justify himself as to the death of Arthur. It has been often said that twelve peers of France had appeared at the coronation of Philip Augustus, in 1179. This, however, a late writer has denied, and does not place them higher than the proceedings against John, in 1204. (Id., p. 44.) In civil causes, as has above been said, there had been several instances wherein the king's court had pronounced judgment against vassals of the crown. The idea had gained ground that the king, by virtue of his full prerogative, communicated to all who sat in that court a portion of his own sovereignty. Such an opinion would be sanctioned by the bishops, and by all who leaned toward the imperial theory of government, never quite eradicated in the Church. But the high rank of John, and the important consequences likely to result from his condemnation, forbade any

irregularity of which advantage might be taken. John is always said to have been sentenced, "judicio parium suorum"; whence we may conclude that inferior lords did not take a part. (Id., ibid.) And from that time we find abundant proofs of the peerage of France, composed of six lay and six spiritual persons; though upon this supposition Normandy was never a substantial member of that class, having only appeared for a moment, to vanish in the next by its reunion to the domain.

The feudal principle seemed now to have recovered strength: a right which the vassals had never enjoyed, though in consistency their due, was formally conceded. But it was too late in the thirteenth century to render any new privilege available against the royal power. Though it was for that time an uncontested right of the peers to be tried by some of their order, this was construed so as not to exclude others, in any number, and with equivalent suffrage. One or more peers being present, the court was, in a later phrase, "suffisamment garnie de pairs"; and thus the lives and rights of the Dukes of Guienne or Burgundy were at the mercy of mere lawyers.

XVIII, page 166.—Savigny, in his "History of Roman Law in the Middle Ages," and Raynouard, in his "Histoire du Droit Municipal" (1828), have, since the first publication of this work in 1818, traced the continuance of municipal institutions, in several French cities, from the age of the Roman Empire to the twelfth century, when the formal charters of communities first appear. But it will render the subject clearer if we look at the constitution which Rome gave to the cities of Italy, and ultimately of the provinces. We are not concerned with the privileges of Roman citizenship, whether local or personal, but with those appertaining to each city. These were originally founded on the republican institutions of Rome herself; the supreme power, so far as it was conceded, and the choice of magistrates, rested with the assembly of the citizens. But after Tiberius took this away from the Roman comitia to vest it in the senate, it appears that, either through imitation or by some imperial edict, this example was followed in every provincial city. We find everywhere a class named "curiales," or "decuriones" (synonymous words), in whom, or in those elected by them, resided whatever authority was not reserved to the proconsul or other Roman magistrate. Though these words occur in early writers, it must be admitted that our chief knowledge of the internal constitution of provincial cities is derived from the rescripts of the later emperors, especially in the Theodosian code.

The decurions are several times mentioned by Pliny. In Greek or Asiatic towns the word *βούλη* answered to curia, and

βουλεύτης to decurio. Pliny refers to a lex Pompeia, probably of the great Pompey, which appears to have regulated the internal constitution, at least of the Pontic and Bithynian cities. According to this, the members of the council, or βούλη, were named by certain censors, to whose list the emperor, in the time of Pliny, added a few by especial favour. ("Plin. Epist.," x, 113.) In later times the decurions are said to have chosen their own members, which can mean little more than that the form of election was required, for birth or property gave an inchoate title. They were a local aristocracy,[28] requiring perhaps originally the qualification of wealth, which in the time of Pliny, at least in Asia, was of a hundred thousand sesterces, or about eight hundred pounds. ("Epist.," i, 19.) But latterly it appears that every son of a decurion inherited the rights as well as the liabilities of his father. We read, "qui origine sunt curiales," and "honor quem nascendo meruit." Property, however, gave a similar title; every one possessing twenty-five jugera of freehold ought to be inscribed in the order. This title, honourable to Roman ears, ordo decurionum, or simply ordo, is always applied to them. They were summoned on the Kalends of March to choose municipal officers, of whom the most remarkable were the duumvirs, answering to the consuls of the imperial city. These possessed a slight degree of civil and criminal jurisdiction, and were bound to maintain the peace. They belonged, however, only to cities enjoying the jus Italicum, a distinction into which we need not now inquire; and Savigny maintains that, in Gaul especially, which we chiefly regard, no local magistrate, in a proper sense, ever existed, the whole jurisdiction devolving on the imperial officers. This is far from the representation of Raynouard, who, though writing after Savigny, seems ignorant of his work, nor has it been adopted by later French inquirers.

But another institution is highly remarkable, and does peculiar honour to the great empire which established it, that of Defensor Civitatis—a standing advocate for the city against the oppression of the provincial governor. His office is only known by the laws from the middle of the fourth century, the earliest being of Valentinian and Valens, in 365; but both Cicero ("Epist.," xii, 56) and Pliny ("Epist.," x, 3) mention an Ecdicus with something like the same functions; and Justinian always uses that word to express the Defensor Civitatis. He was chosen for five years, not by the curiales, but by the citizens at large. Nor could any decurion be defensor; he was to be taken "ex aliis idoneis personis"; which Raynouard translates, "among the most distinguished inhabitants"—a sense neither necessary nor

[28] Though I use this word, which expresses a general truth, yet, in strictness of law, the decurions were "nullâ præditi dignitate." ("Cod. Theod.," 12, 1, 6.)

probable. ("Cod. Theod.," i, tit. xi; Du Cange; Troja, iii, 1066; Raynouard, i, 71.)

The duties of the defensor will best appear by a passage in a rescript of A. D. 385, inserted in the code of Justinian: "Scilicet, ut in primis parentis vicem plebi exhibeas, descriptionibus rusticos urbanosque non patiaris affligi; officialium insolentiæ et judicum procacitati, salva reverentia pudoris, occurras; ingrediendi cum voles ad judicem liberam habeas facultatem; super exigendi damna, vel spolia plus petentium ab his quos liberorum loco tueri debes, excludas; nec patiaris quidquam ultra delegationem solitam ab his exigi, quos certum est nisi tali remedio non posse reparari." ("Cod.," i, 55, 4.) But the Defensores were also magistrates and preservers of order: "Per omnes regiones in quibus fera et periculi sui nescia latronum fervet insania, probatissimi quique et districtissimi defensores adsint disciplinæ, et quotidianis actibus præsint, qui non sinant crimina impunita coalescere; removeant patrocinia quæ favorem reis, et auxilium scelerosis impartiendo, maturari scelera fecerunt." (Id., i, 55, 6. See, too, Theod., ubi supra.)

It may naturally be doubted whether the principles of freedom and justice, which dictated these municipal institutions of the empire, were fully carried out in effect. Perhaps it might be otherwise even in the best times—those of Trajan and the Antonines. But in the decline of the empire we find a striking revolution in the condition of the decurions. Those evil days rendered necessary an immense pressure of taxation; and the artificial scheme of imperial policy, introduced by Diocletian and perfected by Constantine, had for its main object to drain the resources of the provinces for the imperial treasury. The decurions were made liable to such heavy burdens, their responsibility for local as well as public charges was so extensive (in every case their private estates being required to make up the deficiency in the general tax), that the barren honours of the office afforded no compensation, and many endeavoured to shun them. This responsibility, indeed, of the decurions, and their obligation to remain in the city of the domicile, as well as their frequent desire to escape from the burdens of their lot, is manifest even in the "Digest"—that is, in the beginning of the third century (when the opinions of the lawyers therein collected were given), while the empire was yet unscathed—but the evil became more flagrant in subsequent times. The laws of the fourth and fifth centuries, in the Theodosian code, perpetually compel the decurions, under severe penalties, to remain at home and undergo their onerous duties. These laws are one hundred and ninety-two in number, filling the first title of the twelfth book of that code. Guizot, indeed, Savigny, and even Raynouard (though

his bias is always to magnify municipal institutions), have drawn from this source such a picture of the condition of the decurions in the last two centuries of the Western Empire, that we are almost at a loss to reconcile this absolute impoverishment of their order with other facts which apparently bear witness to a better state of society. For, greatly fallen as the decurions of the provincial cities must be deemed, in comparison with their earlier condition, there was still, at the beginning of the fifth century, especially in Gaul, a liberal class of good family, and not of ruined fortunes, dwelling mostly in cities, or sometimes in villas or country houses not remote from cities, from whom the Church was replenished, and who kept up the politeness and luxury of the empire.[24] The senators or senatorial families are often mentioned; and by the latter term we perceive that an hereditary nobility, whatever might be the case with some of the barbarian nations, subsisted in public estimation, if not in privilege, among their Roman subjects. The word senate appears to be sometimes used for the curia at large;[25] but when we find senatorius ordo, or senatorium genus, we may refer it to the higher class, who had served municipal offices, or had become privileged by imperial favour, and to whom the title of "clarissimi" legally belonged. It seems probable that this appellative senator, rather than senior, has given rise to seigneur, sire, and the like in modern languages. The word senatorius appears early to have acquired the meaning noble or gentlemanlike, though I do not find this in the dictionaries. This is, I conceive, what Pliny means by the "quidam senatorius decor," which he ascribes to his young son-in-law Acilianus. ("Epist.," i, 14.) It is the air noble, the indescribable look, rarely met with except in persons of good birth and liberal habits. In the age of Pliny this could only refer to the Roman senate.[26]

A great number of laws in this copious title of the Theodosian code, many of which are cited by Raynouard (vol. i, p. 80),

[24] The letters of Sidonius Apollinaris bear abundant testimony to this, even for his age, which was after the middle of the century; and the state of Gaul must have been much better before. Salvian, too, in his declamation against the vices of the provincials, gives us to understand that they were the vices of wealth.

[25] This was rather by analogy than in strictness: thus, "Suæ, si sic dici oportet, curiæ senatorem." (Lib. 12, tit. 1, lex 85.) But perhaps the language in different parts of the empire, or in different periods, might not be the same. The law just cited is of Arcadius. But Majorian says, in the next age and in the West, of the curiales, "Quorum cœtum recte appellavit antiquitas minorem senatum." (Gothofred, in leg. 85, suprà citat.) Some modern writers too much confound all who are denominated senators with the curiales.

[26] I presume that Sidonius Apollinaris means something complimentary where he says, "Prandebamus breviter, copiose, senatorium ad morem; quo insitum institutumque multas epulas paucis paropsidibus apponi." ("Epist.," ii, 9.)

The hereditary nobility of the senate, implying purity of blood, was recognised very early in imperial Rome. By the lex Julia, the descendants of senators to the fourth generation were incapable of marrying libertinæ. ("Dig.," xxiii, 2, 44.)

manifest a distinction between the curia and the senate, or, as it is sometimes called, "nobilissima curia"; and though perhaps, in certain instances, they may be referred to the great senates of Rome or Constantinople, which were the fountains of all provincial dignity of this kind, there are others which can only be explained on the supposition that they relate to decurions, as it were emeriti, and promoted to a higher rank. Thus, one of Valentinian and Valens, in 364, which is the earliest that seems explicit: "Nemo ad ordinem senatorium ante functionem omnium munerum municipalium senator accedat. Cum autem universis transactis, patriæ stipendia fuerit emensus, tum eum ita ordinis senatorii complexus excipiet, ut reposcentium civium flagitatio non fatiget." (Lex. lvii.) The second title of the sixth book of the Theodosian code, "De Senatoribus," is unfortunately lost; but Gothofred has restored a Paratitlon from other parts of the same code, and especially from the title above mentioned, in the twelfth book, by reference to which this part of the imperial constitution will be best understood. It appears difficult to explain every passage. But, on the whole, we can not hesitate to agree with Guizot and Savigny that the name of senator was given to a privileged class in the provincial cities, who, having served through all the public functions of the curia, were entitled to a legal exemption in future, and ascended to the dignity of "Clarissimi." Many others, independent of the decurions, obtained this rather by the emperor's favour, or by the performance of duties which regularly led to it. They were nominated by the emperor, and might be removed by him; but otherwise their rank was hereditary. Those decurions, therefore, who could bear the burdens of municipal liabilities without impoverishment rose so far above them that their families were secure in wealth as well as privilege. Thus the word senator must be taken, in relation to them, as merely an aristocratic distinction, without regard to its original sense.[27] It is sufficiently clear that senatorial families, by whatever means separated from the rest, constituted the nobility of Gaul. Thus we read in Gregory of Tours (lib. ii, c. 21, sub ann. 475): "Sidonius vir secundum sæculi dignitatem nobilissimus, et de primis Galliarum senatoribus, ita ut filiam sibi Aviti imperatoris in matrimonio sociârit." Another is called "vir valde nobilis et de primis senatoribus Galliarum." Other passages from the same historian might be adduced. But this is not to our immediate purpose, which is to trace briefly the state of municipal institutions in Gaul. The

[27] For this distinction between curiales and senatores the reader may consult the title of the Theodosian code on Decurions, above cited, Leg., 82, 90, 93, 108, 110, 111, 118, 122, 129, 130, 180, 182, 183; all of which throw some light upon, or relate to, this rather obscure subject. Guizot, Savigny, and Raynouard are the modern guides.

senatorial order, or Roman provincial nobility, of which we have just been speaking, is different.

Raynouard, the diligent elucidator of this great question, answers the very specious objection of Mably, drawn from the silence of the capitularies, which, though addressed to many classes of magistrates, never mention any peculiar to the cities, by observing that these capitularies were not designed for those who lived by the Roman law (vol. ii, p. 160). Savigny had already made the same remark. There seems to be some force in this answer; and at least it is impossible to argue with Mably, from a negative probability, against the indisputable evidence that the municipal magistrates of some cities were in being. It may be justly doubted, indeed, whether they possessed a considerable authority. Subject to the count, as the great depositary of royal power, they would not perhaps be held worthy of receiving immediate commands from the sovereign in the national council. Troja speaks with contempt of these "curiæ," whose chief business was to register testaments and witness deeds: "Son sempre i medisimi ed anche derisorj i ricordi delle curie, ridotte alle funzioni di registrar testamenti, donazioni e contratti, o ad elegger magistrati che non poteano difendere il Romano dalle violenze dei Franchi, senza l'intervenzione de' vescovi di sangue Romano, o di sangue barbarico; ma in vano si cercherebbe la vita e la possanza della curia Romana in questi vani simulacri" (vol. i, part v, p. 133). They might be, nevertheless, quite as important as under the later emperors.

It is not necessary to conclude that every city in which the curia or the defensor subsisted during the imperial government retained those institutions throughout the domination of the Franks. It appears that the functions of "defensor civitatis," that is to say, the protection of the city against arbitrary acts of the provincial governors, and the exercise of jurisdiction within its boundaries, frequently devolved upon the bishop. It is impossible not to recognise the efficacy of episcopal government in sustaining municipal rights during the first dynasty. The bishops were a link, or rather a shield, between the barbarians who respected them and the people whom they protected, and to whose race they for a long time commonly belonged. But the bishop was legally, and sometimes actually, elected, as the defensor had been, by the people at large. This, indeed, ceased to be the case before the reign of Charlemagne; and the crown, or (in the progress of the feudal system) its chief vassals, usurped the power of nomination, though the formality of election was not abolished. Certain it is that from this analogy to the defensor, and from the still closer analogy to the feudal vassal, after royal grants of jurisdiction and immunity became usual,

not less than by the respect due to his station, the bishop became as much the civil governor of his city as the count was of the rural district.

This was a great revolution in the internal history of cities, and one which generally led to the discontinuance of their popular institutions; so that after the reign of Charlemagne, if not earlier, we may perhaps consider a municipality choosing its own officers as an exception, though not a very infrequent one, to the general usage. But instances of this are more commonly found to the south of the Loire, where Roman laws prevailed and the feudal spirit was less vigorous than in the northern provinces. Thus Raynouard has deduced the municipal government of ten cities from the fifth to the twelfth century. Seven of these are of the south—Perigueux, Bourges, Arles, Nismes, Marseilles, Toulouse, and Narbonne; three only of the north—Paris, Rheims, and Metz (vol. ii, p. 177). It seems, however, more than probable that these were not the whole; even in the north Meaux and Châlons might be added, and, what in early times was undoubtedly to be reckoned a Frank city, Cologne. The corporate character of many of these is displayed by their coins. "Civitas Massiliensis," or "Narbonensis," will be found on the reverse of pieces bearing the heads of the French kings of the three dynasties, especially under Louis the Debonair and Charles the Bald (p. 152). But it seems to me that the evidence of a popular assembly or curia, even in Rheims, which has always been wont to boast peculiarly of the antiquity of her privileges, is weak comparatively with what M. Raynouard has alleged for the cities of Provence. As to Paris, it is absolutely none at all. This assembly appears to have hardly survived in the north of France, and to have been replaced by scabini. These were originally chosen by the citizens, but gradually on the bishop's nomination. Those of Rheims appear in 847, exercising their functions under an officer of the archbishop. ("Archives Administratifs de la Ville de Rheims," préface, p. 7, in "Documens Inédits," 1839.) The editor, however (M. Varin), inclines to adopt the theory of a Roman origin for the privileges of that city. The citizens called themselves in 991, addressing the archbishop, "cives tui"; whence M. Varin infers that they took an oath of allegiance to that prelate, and that their claims to a prescriptive independence must be given up (vol. i, p. 156). Such independence (that is, of all but the sovereign) can at most only be admitted as to the great cities of Provence and Languedoc, which in the twelfth and thirteenth centuries entered into treaties with foreign powers, and conducted themselves as independent republics, though perhaps under the nominal superiority of the counts. Emulous, as it appears, of Italian liberty, they adopted

the government by consuls elected by the community. And this honourable title was given to the chief magistrates in most cities south of the Loire, though a different system, as we shall see, prevailed on the other bank.

The Benedictine historians of Languedoc are of opinion that the city of Nismes had municipal magistrates in the middle of the tenth century (tome ii, p. 111). The burgesses of Carcassonne appear by name in a charter of 1107 (p. 515). In one of 1131 the consuls of Beziers are mentioned; they existed, therefore, previously (p. 409, and appendix, p. 959). The magistrates of St. Antonin en Rouergue are named in 1136; those of Montpellier in 1142; of Narbonne in 1148; and of St. Gilles in 1149 (pp. 515, 432, 442, 464). The capitouls of Toulouse pretend to an extravagant antiquity; but were, in fact, established by Alfonso, Count of Toulouse, who died in 1148. In 1152 Raymond V confirmed the regulations made by the common council of Toulouse, which became the foundation of the customs of that city (p. 472).

If we may trust altogether to the "Assises de Jérusalem" in their present shape, the court of burgesses, having jurisdiction over persons of that rank, was instituted by Godfrey of Bouillon, who died in 1100. ("Ass. de Jérus.," c. 2.) This would be even earlier than the charter of London, granted by Henry I. Lord Littleton goes so far as to call it "certain that in England many cities and towns were bodies corporate and communities long before the alteration introduced into France by the charters of Louis le Gros." ("Hist. of Henry II," vol. iv, p. 29.) But this position, as I shall more particularly show in another place, is not borne out by any good authority, if it extends to any internal jurisdiction and management of their own police; whereof, except in the instance of London, we have no proof before the reign of Henry II.

The legal incorporation of communities was perhaps earlier in Spain than in any other country. Alfonso V in 1020 granted a charter to Leon, which is said to mention the common council of that city in terms that show it to be an established institution. During the latter part of the eleventh century, as well as in subsequent times, such charters are very frequent. (Marina, "Ensayo Historico-Critico sobre las sieta partidas.") In several instances we find concessions of smaller privileges to towns, without any political power. Thus Berenger, Count of Barcelona, in 1025, confirms to the inhabitants of that city all the franchises which they already possess. These seem, however, to be confined to exemption from paying rent and from any jurisdiction below that of an officer deputed by the count. (De Marca, "Marca Hispanica," p. 1038.) Another grant occurs in the same

volume (p. 909), from the Bishop of Barcelona in favour of a town of his diocese. By some inattention Robertson has quoted these charters as granted to "two villages in the county of Rousillon." ("Hist. Charles V," note 16.) The charters of Tortosa and Lerida in 1149 do not contain any grant of jurisdiction (p. 1303).

The corporate towns in France and England always enjoyed fuller privileges than these Catalonian charters impart. The essential characteristics of a commune, according to M. Bréquigny, were an association confirmed by charter; a code of fixed sanctioned customs; and a set of privileges, always including municipal or elective government. ("Ordonnances," p. 3.) A distinction ought, however, to be pointed out, which is rather liable to elude observation, between communes, or corporate towns, and boroughs (bourgeoisies). The main difference was that in the latter there was no elective government, the magistrates being appointed by the king or other superior. In the possession of fixed privileges and exemptions, in the personal liberty of their inhabitants, and in the certainty of their legal usages, there was no distinction between corporate towns and mere boroughs: and, indeed, it is agreed that every corporate town was a borough, though every borough was not a corporation.[28] The French antiquary quoted above does not trace these inferior communities or boroughs higher than the charters of Louis VI. But we find the name and a good deal of the substance, in England under William the Conqueror, as is manifest from "Doomsday Book."

It is evident that if extensive privileges of internal government had been preserved in the north of France, there could have been no need for that great movement, toward the close of the eleventh century, which ended in establishing civic freedom; much less could the contemporary historians have spoken of this as a new era in the state of France. The bishops were now almost sovereign in their cities; the episcopal, the municipal, the feudal titles, conspired to enhance their power; and from being the protectors of the people, from the glorious office of defensores civitatis, they had, in many places at least, become odious by their own exactions. Hence the citizens of Cambray first revolted against their bishop in 957, and, after several ineffectual risings, ultimately constituted themselves into a community in 1076. The citizens of Mans, about the latter time, had the courage to resist William, Duke of Normandy; but this generous at-

[28] The preface to the twelfth volume of "Ordonnances des Rois" contains a full account of bourgeoisies, as that to the eleventh does of communes. A great part of it, however, is applicable to both species, or rather to the genus and the species. See, too, that to the fourteenth volume of "Recueil des Historiens," p. 74.

tempt at freedom was premature. The cities of Noyon, Beauvais, and St. Quentin, about the beginning of the next century, were successful in obtaining charters of immunity and self-government from their bishops; and where these were violated, on one side or the other, the king, Louis VI, came in to redress the injured party or to compose the dissensions of both. Hence arose the royal charters of the Picard cities, which soon extended to other parts of France, and were used as examples by the vassals of the crown. This subject, and especially the struggles of the cities against the bishops before the legal establishment of communities by charter, is abundantly discussed by M. Thierry, in his "Lettres sur l'Histoire de France." But even where charters are extant, they do not always create an incorporated community, but, as at Laon, recognise and regulate an internal society already established. (Guizot, "Civilisation en France," leçon 47.)

We must here distinguish the cities of Flanders and Holland, which obtained their independence much earlier; in fact, their self-government goes back beyond any assignable date. (Sismondi, iv, 432.) They appear to have sprung from a distinct source, but still from the great reservoir of Roman institutions. The cities on the Rhine retained more of their ancient organization than we find in northern France. The Roman language, says Thierry, had here perished; the institutions survived. At Cologne we find from age to age a corporation of citizens exactly resembling the curia, and whose members set up hereditary pretensions to a Roman descent; we find there a particular tribunal for the "cessio bonorum," a part of Roman law unknown to the old jurisprudence of Germany as much as to that of the feudal system. In the twelfth century the free constitution of Cologne passed for ancient. From Cologne and Trèves municipal rights spread to the Rhenish cities of less remote origin, and reached the great communities of Flanders and Brabant. Thierry has quoted a remarkable passage from the life of the Empress St. Adelaide, who died in 999, whence we may infer the continuance, at least in common estimation, of Roman privileges in the Rhenish cities. "Ante duodecimum circiter annum obitûs sui, in loco qui diciter Salsa (Seltz in Alsace), urbem decrevit fieri sub libertate Romanâ, quem affectum postea ad perfectum perducit effectum." ("Récits des Temps Mérovingiens," i, 274.)

But the acuteness of this writer has discovered a wholly different origin for the communes in the north of France. He deduces them from the old Teutonic institution of guilds, or fraternities by voluntary compact, to relieve each other in poverty, or to protect each other from injury. Two essential character-

istics belonged to them: the common banquet and the common purse. They had also in many instances a religious, sometimes a secret, ceremonial to knit more firmly the bond of fidelity. They became, as usual, suspicious to governments, as several capitularies of Charlemagne prove. But they spoke both to the heart and to the reason in a voice which no government could silence. They readily became connected with the exercise of trades, with the training of apprentices, with the traditional rules of art. We find them in all Teutonic and Scandinavian countries; they are frequently mentioned in our Anglo-Saxon documents, and are the basis of those corporations which the Norman kings recognised or founded. The guild was, of course, in its primary character a personal association; it was in the state, but not the state; it belonged to the city without embracing all the citizens; its purposes were the good of the fellows alone. But when their good was inseparable from that of their little country, their walls and churches, the principle of voluntary association was readily extended; and from the private guild, possessing already the vital spirit of faithfulness and brotherly love, sprung the sworn community, the body of citizens, bound by a voluntary but perpetual obligation to guard each other's rights against the thefts of the weak or the tyranny of the powerful.

The most remarkable proof of this progress from a merchant guild to a corporation is exhibited in the local history of Paris. No mention of a curia or Roman municipality in that city has been traced in any record: we are driven to Raynouard's argument—Could Paris be destitute of institutions which had become the right of all other cities in Gaul? A couple of lines, however, from the poem of Gulielmus Brito, under Philip Augustus, are his only proof (vol. ii, p. 219). But at Paris there was a great college or corporation of nautæ or marchands d'eau—that is, who supplied the town with commodities by the navigation of the Seine.[29] These, indeed, do not seem to be traced very far back, but the necessary documents may be deficient. They appear abundantly in the twelfth century, with a provost and scabini of their own. And to this body the kings in that age conceded certain rights over the inhabitants. The arms borne by the city, a ship, are those of the college of nautæ. The subsequent process by which this corporation slid into a municipality is not clearly developed by the writer to whom I must refer.

Thus there were several sources of the municipal institutions in France; first, the Roman system of decurions, handed down prescriptively in some cities, but chiefly in the south; secondly,

[29] If an inscription quoted by the editors of Du Cange, voc. Nautæ, be genuine, the Nautæ Parisiaci existed as a corporate institution under Tiberius. But this must primâ facie be suspicious in no trifling degree.

the German system of voluntary societies or guilds, spreading to the whole community for a common end; thirdly, the forcible insurrection of the inhabitants against their lords or prelates; and, lastly, the charters, regularly granted by the king or by their immediate superior. Few are likely now to maintain the old theory of Robertson, that the Kings of France encouraged the communities, in order to make head with their help against the nobility, which a closer attention to history refutes. We must here, however, distinguish the corporate towns or communities from the other class, called burgages, bourgeoisies. The châtelains encouraged the growth of villages around their castles, from whom they often derived assistance in war, and conceded to these burgesses some privileges, though not any municipal independence.

Guizot observes, as a difference between the curial system of the empire and that of the French communes in the twelfth century, that the former was aristocratic in its spirit; the decurions filled up vacancies in their body, and ultimately their privileges became hereditary. But the latter were grounded on popular election, though with certain modifications as to eligibility. Yet some of the aristocratic elements continued among the communes of the south (leçon 48).

It is to be confessed that while the kings, from the end of the thirteenth century, altered so much their former policy as to restrain, in great measure, and even in some instances to overthrow, the liberties of French cities, there was too much pretext for this in their lawless spirit and proneness to injustice. The better class, dreading the populace, gave aid to the royal authority, by admitting bailiffs and provosts of the crown to exercise jurisdiction within their walls. But by this the privileges of the city were gradually subverted. (Guizot, leçon 49; Thierry, lettre xiv.) The ancient registers of the Parliament of Paris, called Olim, prove this continual interference of the crown to establish peace and order in towns, and to check their encroachment on the rights of others. "Nulle part," says M. Beugnot, "on ne voit aussi bien que les communes étaient un instrument puissant pour opérer dans l'état de grands et d'heureux changemens, mais non une institution qui eut en elle-même des conditions de durée." ("Régistres des Arrêts," vol. i, p. 192, in "Documens Inédits," 1839.)

A more favourable period for civic liberty commenced and possibly terminated with the most tyrannical of French kings, Louis XI. Though the spirit of rebellion, which actuated a large part of the nobles in his reign, was not strictly feudal, but sprung much more from the combination of a few princes, it equally put the crown in jeopardy, and required all his sagacity to with-

stand its encroachments. He encouraged, therefore, with a policy unusual in the house of Valois, the Tiers État, the middle orders, as a counterpoise. What has erroneously been said of Louis VI is true of his subtle descendant. "His ordinances," it is remarked by Sismondi (xiv, 314), "are distinguished by liberal views in government. He not only gave the citizens, in several places, the choice of their magistrates, but established an urban militia, training the inhabitants to the use of arms, and placing in their hands the appointment of officers." And thus, at the close of our mediæval period, we leave the municipal authority of France in no slight vigour. It may only be added that, for miscellaneous information as to the French communes, the reader should have recourse to that great repository of curious knowledge, the "Histoire des Français," par Monteil, Siècle XV.

The continuance of Italian municipalities has been more disputed of late than that of the French, which both Savigny and Raynouard have placed beyond question. The former of these writers maintains that not only under the Ostrogoths and Greeks (the latter, indeed, might naturally be expected) we have abundant testimony to the ordo decurionum and other Roman institutions in the Italian cities, but that, even under the Lombard dominion, the same privileges were unimpaired, or at least not subverted. This is naturally connected with the general question as to the condition of the natives in that period; those who deny them any rights of citizenship, or even protection by the law, will not be inclined to favour the supposition of an internal jurisdiction. Troja, accordingly, following older writers, rejects the notion of civic government in those cities which endured the Lombard yoke, and elaborately refutes the proofs alleged by Savigny. In this, however, he does not seem always successful; but the early records of Italian communities are by no means so decisive as those that we have found in France.

Liutprand, as Troja conceives, established communities of Lombards alone. But he suggests that even before the reign of Liutprand there may have been such a district government as we find mentioned by Tacitus among the Germans; and this might possibly be denominated by the Lombards curia or ordo, in imitation of the Roman names. If, therefore, we meet with these terms in the laws or records of Italy before Charlemagne, there is no reason why they should not relate to Lombards (p. 125). This is hardly, perhaps, a conjecture that will be favoured. Charlemagne, however, when he introduced the distinction of personal law, constituted in every city a new Lombard community, taking its name from the most numerous people, but in which each nation chose its own scabini or judges (p. 295).

CHAPTER IV

Page 303.—The story of Cava, daughter of Count Julian, whose seduction by Roderic, the last Gothic king, impelled her father to invite the Moors into Spain, enters largely into the cycle of Castilian romance and into the grave narratives of every historian. It can not, however, be traced in extant writings higher than the eleventh century, when it appears in the "Chronicle of the Monk of Silos." There are Spanish historians of the eighth and ninth centuries; in the former, Isidore, Bishop of Beja (Pacensis), who wrote a chronicle of Spain; in the latter, Paulus Diaconus of Merida, Sebastian of Salamanca, and an anonymous chronicler. It does not appear, however, that these dwell much on Roderic's reign. (See Masdeu, "Historia Critica de España," vol. xiii, p. 882.) The most critical investigators of history, therefore, have treated the story as too apocryphal to be stated as a fact. A sensible writer in the "History of Spain and Portugal," published by the Society for the Diffusion of Useful Knowledge, has defended its probability, quoting a passage from Ferreras, a Spanish writer of the eighteenth century, whose authority stands high, and who argues in favour of the tradition from the brevity of the old chroniclers who relate the fall of Spain, and from the want of likelihood that Julian, who had hitherto defended his country with great valour, would have invited the Saracens, except through some strong motives. This, if we are satisfied as to the last fact, appears plausible; but another hyopthesis has been suggested, and is even mentioned by one of the early writers, that Julian, being of Roman descent, was ill affected to the Gothic dynasty, who had never attached to themselves the native inhabitants. This I can not but reckon the less likely explanation of the two. Roderic, who became Archbishop of Toledo in 1208, and our earliest authority after the monk of Silos, calls Julian "vir nobilis de nobili Gothorum prosapia ortus, illustris in officio Palatino, in armis exercitatus," etc. (See Schottus, "Hispania Illustrata," ii, 63.) Few, however, of those who deny the truth of the story as it relates to Cava admit the defection of Count Julian to the Moors, and his existence has been doubted. The two parts of the story cohere together, and we have no better evidence for one than for the other.

Southey, in his notes to the poem of Roderic, says: "The best Spanish historians and antiquaries are persuaded that there is no cause for disbelieving the uniform and concurrent tradition of both Moors and Christians." But this is on the usual assumption that those are the best who agree best with ourselves.

Southey took generally the credulous side, and his critical judgment is of no superlative value. Masdeu, in learning and laboriousness the first Spanish antiquary, calls the story of Julian's daughter "a ridiculous tale, framed in the age of romance, when histories were thrust aside (arrinconadas), and any love-tale was preferred to the most serious truth." ("Hist. Crit. de España," vol. x, p. 223.) And when, in another passage (vol. xii, p. 6), he recounts the story at large, he says that the silence of all writers before the monk of Silos "should be sufficient in my opinion to expel from our history a romance so destitute of foundation, which the Arabian romancers doubtless invented for their ballads."

A modern writer of extensive learning says: "This fable, which has found its way into most of the sober histories of Spain, was first introduced by the monk of Silos, a chronicler of the eleventh century. There can be no doubt that he borrowed it from the Arabs, but it seems hard to believe that it was altogether a tale of their invention. There are facts in it which an Arab could not have invented, unless he drew them from Christian sources; and, as I shall show hereafter, the Arabs knew and consulted the writings of the Christians." (Gayangos, "History of the Mohammedan Dynasties of Spain," vol. i, p. 513.) It does not appear to be a conclusion from this passage that the story is a fable. For if a chronicler of the eleventh century borrowed it from the Arabs, and they again from Christian sources, we get over a good deal of the chasm of time. But if writers antecedent to the monk of Silos have related the Arabian invasion and the fall of Roderic without alluding to so important a point as the treachery of a great Gothic noble, it seems difficult to resist the inference from their silence.

Gayangos investigates in a learned note (vol. i, p. 537) the following points: By whom and when was the name of Ilyan, the Arabic form of Julian, first introduced into Spanish history? Did such a man ever exist? What were his country and religion? Was he an independent prince, or a tributary to the Gothic monarchs? What part did he take in the conquest of Spain by the Arabs?

The account of Julian in the "Chronicon Silense" appears to Gayangos indisputably borrowed from some Arabian authority, and this he proves by several writers from the ninth century downward, "all of whom mention, more or less explicitly, the existence of a man living in Africa, and named Ilyan, who helped the Arabs to make a conquest of Spain; to which I ought to add that the rape of Ilyan's daughter, and the circumstances attending it, may also be read in detail in the Mohammedan authors who preceded the monk of Silos." The result of this learned

writer's investigation is, that Ilyan really existed, that he was a Christian chief, settled, not in Spain, but on the African coast, and that he betrayed, not his country (except, indeed, as he was probably of Spanish descent), but the interests of his religion, by assisting the Saracens to subjugate the Gothic kingdom.[1]

The story of Cava is not absolutely overthrown by this hypothesis, though it certainly may be the invention of some Christian or Arabian romancer. It is perfectly true that of itself it contains no apparent improbability. Injuries have been thus inflicted by kings, and thus resented by subjects. But for this very reason it was likely to be invented; and the unwillingness with which many seem to surrender so romantic a tale attests the probability of its obtaining currency in an uncritical period. We must reject it as false or not, according as we lay stress on the negative argument from the silence of very early writers (an argument, strong even as it is, and which would be insuperable if they were less brief and imperfect) and on the presumptions adduced by Gayangos that Julian was not a noble Spaniard; but we can not receive this celebrated legend at any rate with more than a very sceptical assent, not sufficient to warrant us in placing it among the authentic facts of history.

CHAPTER VII

I, page 412.—This grant is recorded in two charters differing materially from each other: the first transcribed in Ingulfus's "History of Croyland," and dated at Winchester on the Nones of November, 855; the second extant in two chartularies, and bearing date at Wilton, April 22, 854. This is marked by Mr. Kemble as spurious ("Codex Ang.-Sax. Diplom.," ii, 52); and the authority of Ingulfus is not sufficient to support the first. The fact, however, that Ethelwolf made some great and general donation to the Church rests on the authority of Asser, whom later writers have principally copied. His words are: "Eodem quoque anno [855] Adelwolfus venerabilis, rex Occidentalium Saxonum, decimam totius regni sui partem ab omni regali servitio et tributo liberavit, et in sempiterno grafio in cruce

[1] The Arabian writer whom Gayangos translates, one of late date, speaks of Ilyan as Governor of Ceuta, but tells the story of Cava in the usual manner. The Goths may very probably have possessed some of the African coast, so that the residence of Julian on that side of the straits would not be incompatible with his being truly a Spaniard. Ilyan is evidently not a European form of the name.

Christi, pro redemptione animæ suæ et antecessorum suorum, Uni et Trino Deo immolavit." (Gale, "XV Script.," iii, 156.)

It is really difficult to infer anything from such a passage; but whatever the writer may have meant, or whatever truth there may be in his story, it seems impossible to strain his words into a grant of tithes. The charter in Ingulfus rather leads to suppose, but that in the "Codex Diplomaticus" decisively proves, that the grant conveyed a tenth part of the land, and not of its produce. Sir F. Palgrave, by quoting only the latter charter, renders Selden's "Hypothesis"—that the general right to tithes dates from this concession of Ethelwolf—even more untenable than it is. Certain the charter copied by Ingulfus, which Sir F. Palgrave passes in silence, does grant "decimàm partem bonorum"—that is, I presume, of chattels, which, as far as it goes, implies a tithe—while the words applicable to land are so obscure and apparently corrupt that Selden might be warranted in giving them the like construction. Both charters probably are spurious; but there may have been an extensive grant to the Church, not only of immunity from the trinoda necessitas, which they express, but of actual possessions. Since, however, it must have been impracticable to endow the Church with a tenth part of appropriated lands, it might possibly be conjectured that she took a tenth part of the produce, either as a composition or until means should be found of putting her in possession of the soil. And although, according to the notions of those times, the actual property might be more desirable, it is plain to us that a tithe of the produce was of much greater value than the same proportion of the land itself.

II, page 421.—Two living writers of the Roman Catholic communion, Dr. Milner, in his "History of Winchester," and Dr. Lingard, in his "Antiquities of the Anglo-Saxon Church," contend that Elgiva, whom some Protestant historians are willing to represent as the Queen of Edwy, was but his mistress; and seem inclined to justify the conduct of Odo and Dunstan toward this unfortunate couple. They are unquestionably so far right that few, if any, of those writers who have been quoted as authorities in respect of this story speak of the lady as a queen or lawful wife. I must therefore strongly reprobate the conduct of Dr. Henry, who, calling Elgiva queen, and asserting that she was married, refers, at the bottom of his page, to William of Malmesbury and other chroniclers, who give a totally opposite account; especially as he does not intimate, by a single expression, that the nature of her connection with the king was equivocal. Such a practice, when it proceeds, as I fear it did in this instance, not from oversight, but from prejudice, is a glaring

violation of historical integrity, and tends to render the use of references—that great improvement of modern history—a sort of fraud upon the reader. The subject, since the first publication of these volumes, has been discussed by Dr. Lingard in his histories both of England and of the Anglo-Saxon Church, by the Edinburgh reviewer of that history, vol. xlii (Mr. Allen), and by other late writers. Mr. Allen has also given a short dissertation on the subject, in the second edition of his "Inquiry into the Royal Prerogative," posthumously published. It must ever be impossible, unless unknown documents are brought to light, to clear up all the facts of this litigated story. But though some Protestant writers, as I have said, in maintaining the matrimonial connection of Edwy and Elgiva, quote authorities who give a different colour to it, there is a presumption of the marriage from a passage of the "Saxon Chronicle," A. D. 958 (wanting in Gibson's edition, but discovered by Mr. Turner, and now restored to its place by Mr. Petrie), which distinctly says that Archbishop Odo separated Edwy, the king, and Elgiva because they were too nearly related. It is therefore highly probable that she was queen, though Dr. Lingard seems to hesitate. This passage was written as early as any other which we have on the subject, and in a more placid and truthful tone.

The royalty, however, of Elgiva will be out of all possible doubt if we can depend on a document, being a reference to a charter, in the Cotton library (Claudius, B., vi), wherein she appears as a witness. Turner says of this: "Had the charter even been forged, the monks would have taken care that the names appended were correct." This Dr. Lingard inexcusably calls "confessing that the instrument is of very doubtful authenticity."

The Edinburgh reviewer, who had seen the manuscript, believes it genuine, and gives an account of it. Mr. Kemble has printed it without mark of spuriousness. ("Cod. Diplom.," vol. v, p. 378.) In this document we have the names of Ælfgifu, the king's wife, and of Æthelgifu, the king's wife's mother. The signatures are merely recited, so that the document itself can not be properly styled a charter; but we are only concerned with the testimony it bears to the existence of the Queen Elgiva and her mother.

If this charter, thus recited, is established, we advance a step, so as to prove the existence of a mother and daughter, bearing nearly the same names, and such names as apparently imply royal blood, the latter being married to Edwy. This would tend to corroborate the coronation story, divesting it of the gross exaggerations of the monkish biographers and their followers. It might be supposed that the young king, little more than a boy, retired from the drunken revelry of his courtiers to converse,

and perhaps romp, with his cousin and her mother; that Dunstan audaciously broke in upon him, and forced him back to the banquet; that both he and the ladies resented this insolence as it deserved, and drove the monk into exile; and that the marriage took place.

It is more difficult to deal with the story originally related by the biographer of Odo, that after his marriage Edwy carried off a woman with whom he lived, and whom Odo seized and sent out of the kingdom. This lady is called by Eadmer una de præscriptis mulieribus; whence Dr. Lingard assumes her to have been Ethelgiva, the queen's mother. This was in his "History of England" (i, 517); but in the second edition of the "Antiquities of the Anglo-Saxon Church" he is far less confident than either in the first edition of that work or in his history. In fact, he plainly confesses that nothing can be clearly made out beyond the circumstances of the coronation.

Although the writers before the conquest do not bear witness to the cruelties exercised on some woman connected with the king, either as queen or mistress, at Gloucester, yet the subsequent authorities of Eadmer, Osbern, and Malmesbury may lead us to believe that there was truth in the main facts, though we can not be certain that the person so treated was the Queen Elgiva. If indeed their accounts are accurate, it seems at first that they do not agree with their predecessors, for they represent the lady as being in the king's company up to his flight from the insurgents: "Regem cum adultera fugitantem persequi non desistunt." But though we read in the "Saxon Chronicle" that Odo divorced Edwy and Elgiva, we are not sure that they submitted to the sentence. It is therefore possible that she was with him in this disastrous flight, and, having fallen into the hands of the pursuers, was put to death at Gloucester. True it is that her proximity of blood to the king would not warrant Osbern to call her adultera; but bad names cost nothing. Malmesbury's words look more like it, if we might supply something, "proximè cognatam invadens uxorem [cujusdam?] ejus forma deperibat"; but as they stand in his text, they defy my scanty knowledge of the Latin tongue. On the whole, however, no reliance is to be placed on very passionate and late authorities. What is manifest alone is, that a young king was persecuted and dethroned by the insolence of monkery exciting a superstitious people against him.

III, page 422.—I am induced, by further study, to modify what is said in the text with respect to the well-known passages in Irenæus and Cyprian. The former assigns, indeed, a considerable weight to the Church of Rome, simply as testimony to apostolical teaching; but this is plainly not limited to the bishop of

that city, nor is he personally mentioned. It is therefore an argument, and no slight one, against the pretended supremacy rather than the contrary.

The authority of Cyprian is not, perhaps, much more to the purpose. For the only words in his treatise "De Unitate Ecclesiæ" which assert any authority in the chair of St. Peter, or indeed connect Rome with Peter at all, are interpolations, not found in the best manuscripts or in the oldest editions. They are printed within brackets in the best modern ones. (See James on "Corruptions of Scripture in the Church of Rome," 1612.) True it is, however, that, in his epistle to Cornelius, Bishop of Rome, Cyprian speaks of "Petri cathedram, atque ecclesiam principalem unde unitas sacerdotalis exorta est." ("Epist.," lix, in edit. Lip., 1838; lv, in Baluze and others.) And in another he exhorts Stephen, successor of Cornelius, to write a letter to the Bishops of Gaul, that they should depose Marcian of Arles for adhering to the Novatian heresy. ("Epist.," lxviii or lxvii.) This is said to be found in very few manuscripts. Yet it seems too long, and not sufficiently to the purpose, for a popish forgery. All bishops of the Catholic Church assumed a right of interference with each other by admonition; and it is not entirely clear from the language that Cyprian meant anything more authoritative; though I incline, on the whole, to believe that, when on good terms with the See of Rome, he recognised in her a kind of primacy derived from that of St. Peter.

The case, nevertheless, became very different when she was no longer of his mind. In a nice question which arose, during the pontificate of this very Stephen, as to the rebaptism of those to whom the rite had been administered by heretics, the Bishop of Rome took the negative side; while Cyprian, with the utmost vehemence, maintained the contrary. Then we find no more honeyed phrases about the principal church and the succession to Peter, but a very different style: "Cur in tantum Stephani, fratris nostri, obstinatio dura prorupit?" ("Epist.," lxxiv.) And a correspondent of Cyprian, doubtless a bishop, Firmilianus by name, uses more violent language: "Audacia et insolentia ejus —aperta et manifesta Stephani stultitia—de episcopatûs sui loco gloriatur, et se successionem Petri tenere contendit." ("Epist.," lxxv.) Cyprian proceeded to summon a council of the African bishops, who met, seventy-eight in number, at Carthage. They all agreed to condemn heretical baptism as absolutely invalid. Cyprian addressed them, requesting that they would use full liberty, not without a manifest reflection on the pretensions of Rome: "Neque enim quisquam nostrûm episcopum se esse episcoporum constituit, aut tyrannico terrore ad obsequendi necessitatem collegas suos adigit, quando habeat omnis episcopus pro licentîa

libertatis et potestatis suæ arbitrium proprium, tamque judicari ab alio non possit, quam nec ipse potest alterum judicare." We have here an allusion to what Tertullian had called horrenda vox, "episcopus episcoporum"; manifestly intimating that the See of Rome had begun to assert a superiority and right of control, by the beginning of the third century, but at the same time that it was not generally endured. Probably the notion of their superior authority, as witnesses of the faith, grew up in the Church of Rome very early; and when Victor, toward the end of the second century, excommunicated the churches of Asia for a difference as to the time of keeping Easter, we see the germination of that usurpation, that tyranny, that uncharitableness, which reached its culminating point in the centre of the mediæval period.

CHAPTER VIII

I, page 506.—These seven princes enumerated by Bede have been called Bretwaldas, and they have, by late historians, been advanced to higher importance and to a different kind of power than, as it appears to me, there is any sufficient ground to bestow on them. But as I have gone more fully into this subject in a paper published in the thirty-second volume of the "Archæologia," I shall content myself with giving the most material parts of what will there be found.

Bede is the original witness for the seven monarchs who before his time had enjoyed a preponderance over the Anglo-Saxons south of the Humber: "Qui cunctis australibus gentis Anglorum provinciis, quæ Humbræ fluvio et contiguis ei terminis sequestrantur a Borealibus, imperârunt." ("Hist. Eccle.," lib. ii, c. 5.) The four first-named had no authority over Northumbria; but the last three being sovereigns of that kingdom, their sway would include the whole of England.

The "Saxon Chronicle," under the reign of Egbert, says that he was the eighth who had a dominion over Britain, using the remarkable word Bretwalda, which is found nowhere else. This, by its root waldan, a Saxon verb, to rule (whence our word wield), implies a ruler of Britain or the Britons. The "Chronicle" then copies the enumeration of the other seven in Bede, with a little abridgment. The kings mentioned by Bede are Ælli or Ella, founder of the kingdom of the South Saxons, about

477; Ceaulin, of Wessex, after the interval of nearly a century; Ethelbert, of Kent, the first Christian king; Redwald, of East Anglia; after him three Northumbrian kings in succession, Edwin, Oswald, Oswin. We have, therefore, sufficient testimony that before the middle of the seventh century four kings, from four Anglo-Saxon kingdoms, had, at intervals of time, become superior to the rest; excepting, however, the Northumbrians, whom Bede distinguishes, and whose subjection to a southern prince does not appear at all probable. None, therefore, of these could well have been called Bretwalda, or ruler of the Britons, while not even his own countrymen were wholly under his sway.

We now come to three Northumbrian kings, Edwin, Oswald, and Oswin, who ruled, in Bede's language, with greater power than the preceding, over all the inhabitants of Britain, both English and British, with the sole exception of the men of Kent. This he reports in another place with respect to Edwin, the first Northumbrian convert to Christianity; whose worldly power, he says, increased so much that, what no English sovereign had done before, he extended his dominion to the furthest bounds of Britain, whether inhabited by English or by Britons. ("Hist. Eccl.," lib. ii, c. 9.) Dr. Lingard has pointed out a remarkable confirmation of this testimony of Bede in a "Life of St. Columba," published by the Bollandists. He names Cuminius, a contemporary writer, as the author of this life; but I find that these writers give several reasons for doubting whether it be his. The words are as follow: "Oswaldum regem, in procinctu belli castra metatum, et in papilione supra pulvillum dormientem allocutus est, et ad bellum procedere jussit. Processit et secuta est victoria; reversusque postea totius Britanniæ imperator ordinatus a Deo, et tota incredula gens baptizata est." ("Acta Sanctorum," Jun. 23.) This passage, on account of the uncertainty of the author's age, might not appear sufficient. But this anonymous "Life of Columba" is chiefly taken from that by Adamnan, written about 700; and in that life we find the important expression about Oswald, "Totius Britanniæ imperator ordinatus a Deo." We have, therefore, here probably a distinct recognition of the Saxon word Bretwalda; for what else could answer to emperor of Britain? And, as far as I know, it is the only one that exists. It seems more likely that Adamnan refers to a distinct title bestowed on Oswald by his subjects, than that he means to assert as a fact that he truly ruled over all Britain. This is not very credible, notwithstanding the language of Bede, who loves to amplify the power of favourite monarchs. For though it may be admitted that these Northumbrian kings enjoyed at times a preponderance over the other Anglo-Saxon principalities, we know that both Edwin and Oswald lost their lives in great defeats

by Penda of Mercia. Nor were the Strathcluyd Britons in any permanent subjection. The name of Bretwalda, as applied to these three kings, though not so absurd as to make it incredible that they assumed it, asserts an untruth.

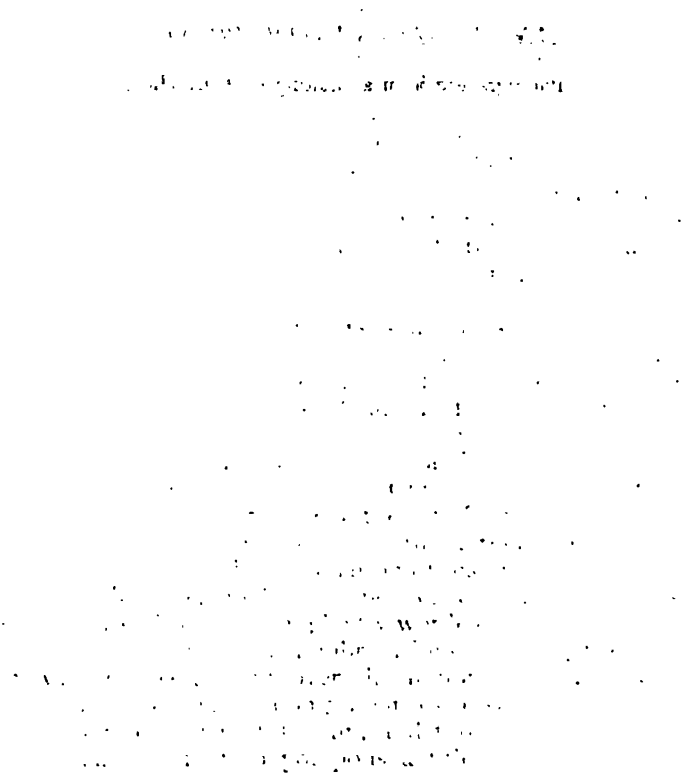
It is, however, at all events plain from history that they obtained their superiority by force; and we may probably believe the same of the four earlier kings enumerated by Bede. An elective dignity, such as is now sometimes supposed, can not be presumed in the absence of every semblance of evidence, and against manifest probability. What appearance do we find of a federal union among the kites and crows, as Milton calls them, of the Heptarchy? What but the law of the strongest could have kept these rapacious and restless warriors from tearing the vitals of their common country? The influence of Christianity in effecting a comparative civilization, and producing a sense of political as well as religious unity, had not yet been felt.

Mercia took the place of Northumberland as the leading kingdom of the Heptarchy in the eighth century. Even before Bede brought his "Ecclesiastical History" to a close, in 731, Ethelbald of Mercia had become paramount over the southern kingdoms; certainly more so than any of the first four who are called by the Saxon chronicler Bretwaldas. "Et hæ omnes provinciæ cæteræque australes ad confinium usque Hymbræ fluminis cum suis quæque regibus, Merciorum regi Ethelbaldo subjectæ sunt." ("Hist. Eccl.," v, 23.) In a charter of Ethelbald he styles himself—"non solum Mercensium sed et universarum provinciarum quæ communi vocabulo dicuntur Suthangli divina largiente gratia rex." ("Codex Ang.-Sax. Diplom.," i, 96; vide etiam 100, 107.) Offa, his successor, retained a great part of this ascendency, and in his charters sometimes styles himself "rex Anglorum," sometimes "rex Merciorum simulque aliarum circumquaque nationum." (Ib., 162, 166, 167, et alibi.) It is impossible to define the subordination of the southern kingdoms, but we can not reasonably imagine it to have been less than they paid in the sixth century to Ceaulin and Ethelbert. Yet to these potent sovereigns the "Saxon Chronicle" does not give the name Bretwalda, nor a place in the list of British rulers. It copies Bede in this passage servilely, without regard to events which had occurred since the termination of his history.

I am, however, inclined to believe, combining the passage of Adamnan with this less explicitly worded of the "Saxon Chronicle," that the three Northumbrian kings, having been victorious in war and paramount over the minor kingdoms, were really designated, at least among their own subjects, by the name Bretwalda, or ruler of Britain, and totius Britanniæ imperator. The assumption of so pompous a title is characteristic of the

AN ANGLO-SAXON PRINCE.

Photogravure from a painting by Carl Haag.



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vaunting tone which continued to increase down to the conquest. We may, therefore, admit as probable that Oswald of Northumbria in the seventh century, as well as his father Edwin and his son Oswin, took the appellation of Bretwalda to indicate the supremacy they had obtained, not only over Mercia and the other kingdoms of their countrymen, but, by dint of successful invasions, over the Strathcluyd Britons and the Scots beyond the Forth. I still entertain the greatest doubts, to say no more, whether this title was ever applied to any but these Northumbrian kings. It would have been manifestly ridiculous, too ridiculous, one would think, even for Anglo-Saxon grandiloquence, to confer it on the first four in Bede's list; and if it expressed an acknowledged supremacy over the whole nation, why was it never assumed in the eighth century?

We do not derive much additional information from later historians. Florence of Worcester, who usually copies the "Saxon Chronicle," merely in this instance transcribes the text of Bede with more exactness than that had done; he neither repeats nor translates the word Bretwalda. Henry of Huntingdon, after repeating the passage in Bede, adds Egbert to the seven kings therein mentioned, calling him "rex et monarcha totius Britanniæ," doubtless as a translation of the word Bretwalda in the "Saxon Chronicle"; subjoining the names of Alfred and Edgar as ninth and tenth in the list. Egbert, he says, was eighth of ten kings remarkable for their bravery and power (fortissimorum) who have reigned in England. It is strange that Edward the Elder, Athelstan, and Edred are passed over.

Rapin was the first who broached the theory of an elective Bretwalda, possessing a sort of monarchical supremacy in the constitution of the Heptarchy; something like, as he says, the dignity of stadtholder of the Netherlands. It was taken up in later times by Turner, Lingard, Palgrave, and Lappenberg. But for this there is certainly no evidence whatever; nor do I perceive in it anything but the very reverse of probability, especially in the earlier instances. With what we read in Bede we may be content, confirmed as with respect to a Northumbrian sovereign it appears to be by the "Life of Columba"; and the plain history will be no more than this—that four princes from among the southern Anglo-Saxon kingdoms, at different times obtained, probably by force, a superiority over the rest; that afterward three Northumbrian kings united a similar supremacy with the government of their own dominions; and that, having been successful in reducing the Britons of the north and also the Scots into subjection, they assumed the title of Bretwalda, or ruler of Britain. This title was not taken by any later kings, though some in the eighth century were very powerful in England; nor

did it attract much attention, since we find the word only once employed by a historian, and never in a charter. The consequence I should draw is, that too great prominence has been given to the appellation, and undue inferences sometimes derived from it, by the eminent writers above mentioned.

II, page 508.—The reduction of all England under a single sovereign was accomplished by Edward the Elder, who may, therefore, be reckoned the founder of our monarchy more justly than Egbert. The five Danish towns, as they were called, Leicester, Lincoln, Stamford, Derby, and Nottingham, had been brought under the obedience of his gallant sister Æthelfleda, to whom Alfred had intrusted the viceroyalty of Mercia. Edward himself subdued the Danes of East Anglia and Northumberland. In 922 "the kings of the North Welsh sought him to be their lord." And in 924 "chose him for father and lord, the King of the Scots and the whole nation of the Scots, and Regnald, and the son of Eadulf, and all those who dwell in Northumberland, as well English as Danes and Northmen and others, and also the King of the Strathcluyd Britons, and all the Strathcluyd Britons." ("Sax. Chronicle.")

Edward died next year; of his son Æthelstan it is said that "he ruled all the kings who were in this island; first, Howel, King of West Welsh, and Constantine, King of the Scots, and Uwen, King of the Gwentian (Silurian) people, and Ealdrad, son of Ealdalf of Bamborough, and they confirmed the peace by pledge and by oaths at the place which is called Earnot, on the fourth of the Ides of July; and they renounced all idolatry, and after that submitted to him in peace." (Id., A. D. 926.)

From this time a striking change is remarkable in the style of our kings. Edward, of whom we have no extant charters after these great submissions of the native princes, calls himself only Angul-Saxonum rex. But in those of Athelstan, such as are reputed genuine (for the tone is still more pompous in some marked by Mr. Kemble with an asterisk), we meet, as early as 927, with "totius Britanniæ monarchus, rex, rector, or basileus"; "totius Britanniæ solio sublimatus"; and other phrases of insular sovereignty. ("Codex Diplom.," vol. ii, passim; vol. v, 198.) What has been attributed to the imaginary Bretwaldas belonged truly to the kings of the tenth century. And the grandiloquence of their titles is sometimes almost ridiculous. They affected particularly that of basileus as something more imperial than king, and less easily understood. Edwy and Edgar are remarkable for this pomp, which shows itself also in the spurious charters of older kings. But Edmund and Edred with more truth and simplicity had generally denominated themselves

" rex Anglorum, cæterorumque in circuitu persistentium gubernator et rector " (" Codex Diplom.," vol. ii, passim), an expression which was retained sometimes by Edgar. And though these exceedingly pompous phrases seem to have become less frequent in the next century, we find " totius Albionis rex," and equivalent terms, in all the charters of Edward the Confessor.[1]

But looking from these charters, where our kings asserted what they pleased, to the actual truth, it may be inquired whether Wales and Scotland were really subject, and in what degree, to the self-styled basileus at Winchester. This is a debatable land, which, as merely historical antiquities are far from being the object of this work, I shall leave to national prejudice or philosophical impartiality. Edgar, it may be mentioned, in a celebrated charter, dated in 964, asserts his conquest of Dublin and a great part of Ireland: " Mihi autem concessit propitia divinitas cum Anglorum imperio omnia regna insularum oceani cum suis ferocissimis regibus usque Norwegiam, maximamque partem Hiberniæ cum suâ nobilissimâ civitate Dublinia Anglorum regno subjugare; quos etiam omnes meis imperiis colla subdere, Dei favente gratiâ, coegi." (" Codex Diplom.," ii, 404.) No historian mentions any conquest or even expedition of this kind. Sir Francis Palgrave (ii, 258) thinks the charter " does not contain any expression which can give rise to suspicion; and its tenor is entirely consistent with history ": meaning, I presume, that the silence of history is no contradiction. Mr. Kemble, however, marks it with an asterisk. I will mention here that an excellent summary of Anglo-Saxon history, from the earliest times to the conquest, has been drawn up by Sir F. Palgrave, in the second volume of the " Rise and Progress of the English Commonwealth."

III, page 512.—The proper division of freemen was into eorls and ceorls: ge eorle—ge ceorle; ge eorlische—ge ceorlische; occur in several Anglo-Saxon texts. The division corresponds to the phrase " gentle and simple " of later times. Palgrave (p. 11) agrees with this. Yet in another place (vol. ii, p. 352) he says: " It certainly designated a person of noble race. This is the form in which it is employed in the laws of Ethelbert. The earl and the churl are put in opposition to each other as the two extremes of society." I can not assent to this; the second thoughts of my learned friend I like less than the first. It seems like saying men and women are the extremes of humanity, or

[1] " As a general rule it may be observed that before the tenth century the proem is comparatively simple; that about that time the influence of the Byzantine court began to be felt; and that from the latter half of that century pedantry and absurdity struggle for the mastery." (Kemble's Introduction to vol. ii, p. x.)

odd and even of number. What was in the middle?[2] Mr. Kemble, in his glossary to "Beowulf," explains eorl by vir fortis, pugil vir; and proceeds thus: "Eorl is not a title, as with us, any more than beorn. . . . We may safely look upon the origin of earl, as a title of rank, to be the same as that of the comites, who, according to Tacitus, especially attached themselves to any distinguished chief. That these fideles became under a warlike prince something more important than the early constitution of our tribes contemplated, is natural, and is, moreover, proved by history, and they laid the foundations of that system which recognises the king as the fountain of honour. In the later Anglo-Saxon constitution, ealdorman was a prince, a governor of a country or small kingdom, sub-regulus; he was a constitutional officer; the earl was not an officer at all, though afterward the government of counties came to be intrusted to him; at first, if he had a beneficium or feud at all, it was a horse, or rings, or arms; afterward lands. This appears constantly in 'Beowulf,' and requires no further remark." A speech, indeed, ascribed to Withred, King of Kent, in 696, by the "Saxon Chronicle," would prove earls to have been superior to aldermen in that early age. But the forgery seems too gross to impose on any one. Ceorl, in "Beowulf," is a man, vir; it is sometimes a husband; a woman is said ceorlian—i. e., viro se adjungere.

Dr. Lingard has clearly apprehended, and that long before Mr. Kemble's publication, the distributive character of the words eorl and ceorl. "Among the Anglo-Saxons the free population was divided into the eorl and ceorl, the man of noble and ignoble descent"; and he well observes that "by not attending to this meaning of the word eorl, and rendering it earl, or rather comes, the translators of the Saxon laws have made several passages unintelligible." ("Hist. of England," i, 468.) Mr. Thorpe has not, as I conceive, explained the word as accurately or perspicuously as Mr. Kemble. He says, in his glossary to "Ancient English Laws": "Eorl, comes, satelles principis. This is the prose definition of the word; in Anglo-Saxon and Old Saxon poetry it signifies man, though generally applied to one of consideration on account of his rank or valour. Its etymon is unknown, one deriving it from Old Norse, ar, minister, satelles; another from jara, prœlium. (See B. Hald., voc. Jarl, and the gloss. to 'Sœmund,' by Edda, tome i, p. 597.) This title, which seems introduced by the Jutes of Kent, occurs frequently in the

[2] An earlier writer has fallen into the same mistake, which should be corrected, as the equivocal meaning of the word eorl might easily deceive the reader. "Ceorls, or cyrlise men, are opposed, as the lowest description of freemen, to eorls, as the highest of the nobility." (Heywood "On Ranks among the Anglo-Saxons," p. 278.)

laws of the kings of that district, the first mention of it being in Ethelbert, 13. Its more general use among us dates from the later Scandinavian invasions; and though originally only a title of honour, it became in later times one of office, nearly supplanting the older and more Saxon one of ealdorman." The editor does not here particularly advert to the use of the word in opposition to ceorl. That a word merely expressing man may become appropriate to men of dignity appears from bar and baro; and something analogous is seen in the Latin vir. Lappenberg (vol. ii, p. 13) says: "The title of eorl occurs in early times among the laws of the Kentish kings, but became more general only in the Danish times, and is probably of old Jutish origin." This is a confusion of words: in the laws of the Kentish kings, eorl means only ingenuus, or, if we please, nobilis; in the Danish times it was comes, as has just been pointed out.

Such was the eorl, and such the ceorl, of our forefathers—one a gentleman, the other a yeoman, but both freemen. We are liable to be misled by the new meaning which from the tenth century was attached to the former word, as well as by the inveterate prejudice that nobility of birth must carry with it something of privilege above the most perfect freedom. But we do not appreciate highly enough the value of the latter in a semi-barbarous society. The eorlcundman was generally, though not necessarily, a freeholder; he might, unless restrained by special tenure, depart from or alienate his land; he was, if a freeholder, a judge in the county court; he might marry, or become a priest, at his discretion; his oath weighed heavily in compurgation; above all, his life was valued at a high composition; we add, of course, the general respect which attaches itself to the birth and position of a gentleman. Two classes, indeed, there were, both "eorlcund," or of gentle birth, and so called in opposition to ceorls, but in a relative subordination. Sir F. Palgrave has pointed out the distinction in a passage which I shall extract:

"The whole scheme of the Anglo-Saxon law is founded upon the presumption that every freeman, not being a 'hlaford,' was attached to a superior, to whom he was bound by fealty, and from whom he could claim a legal protection or warranty, when accused of any transgression or crime. If, therefore, the 'eorlcund' individual did not possess the real property which, either from its tenure or its extent, was such as to constitute a lordship, he was then ranked in the very numerous class whose members, in Wessex and its dependent states, were originally known by the name of 'sithcundmen,' an appellation which we may paraphrase by the heraldic expression, 'gentle by birth and

blood.'[3] This term of sithcundman, however, was only in use in the earlier periods. After the reign of Alfred it is lost; and the most comprehensive and significant denomination given to this class is that of 'sixhœndmen,' indicating their position between the highest and lowest law-worthy classes of society. Other designations were derived from their services and tenures. Radechnights, and lesser thanes, seem to be included in this rank, and to which, in many instances, the general name of sokemen was applied. But, however designated, the sithcundman, or sixhœndman, appears in every instance in the same relative position in the community—classed among the nobility, whenever the eorl and the ceorl are placed in direct opposition to each other; always considered below the territorial aristocracy, and yet distinguished from the villenage by the important right of selecting his hlaford at his will and pleasure. By common right the 'sixhœndman' was not to be annexed to the glebe. To use the expressions employed by the compilers of 'Doomsday,' he could 'go with his land wheresoever he chose,' or, leaving his land, he might 'commend' himself to any hlaford who would accept of his fealty" (vol. i, p. 14).[4]

It may be pointed out, however, which Sir F. Palgrave has here forgotten to observe, that the distinction of weregild between the twelfhynd and syxhynd was abolished by a treaty between Alfred and Guthrum. (Thorpe's "Ancient Laws," p. 66.) This indeed affects only the reciprocity of law between English and Danes. Yet it is certain that from that time we rarely find mention of the intermediate rank between the twelfhynd, or superior thane, and the twyhynd or ceorl. The sithcundman, it would seem, was from henceforth rated at the same composition as his lord; yet there is one apparent exception (I have not observed any other) in the laws of Henry I. It is said here (c. 76): "Liberi alii twyhyndi, alii syxhyndi, alii twelfhyndi. Twyhyndus homo dicitur, cujus wera est 22 solidorum, qui faciunt 4 libras. Twelfhyndus est homo plene nobilis, id est, thainus, cujus wera est 1,200 solidorum, qui faciunt libras 25." It is remarkable that, though the syxhyndman is named at first, nothing more is said of him, and the twelfhyndman is defined to be a thane. It appears from several passages that the laws recorded in this treatise are chiefly those of the West Saxons, which differed in some respects from those of Mercia, Kent, and the Danish counties. With regard to the word sithcund, it does occur once or twice in the laws of Edward the Elder. It might be supposed that

[3] Is not the word sithcundman properly descriptive of his dependence on a lord, from the Saxon verb sithian, to follow?

[4] This right of choosing a lord at pleasure, so little feudal, seems not indisputable enough to warrant so general a proposition. The conditions of tenure in the eleventh century, whatever they may once have been, had become exceedingly various.

the Danes had retained the principle of equality among all of gentle birth, common, as we read in Grimm, to the northern nations, which the distinction brought in by the Kings of Kent between two classes of eorls or thanes seemed to contravene. We shall have occasion, however, to quote a passage from the laws of Canute, which indicates a similar distinction of rank among the Danes themselves, whatever might be the rule as to composition for life.

The influence of Danish connections produced another great change in the nomenclature of ranks. Eorl lost its general sense of good birth and became an official title, for the most part equivalent to alderman, the governor of a shire or district. It is used in this sense, for the first time, in the laws of Edward the Elder. Yet it had not wholly lost its primary meaning, since we find eorlish and ceorlish opposed, as distributive appellations, in one of Athelstan. (Id., p. 96.) It is said in a sort of compilation, entitled "On Oaths, Weregilds, and Ranks," subjoined to the laws of Edward the Elder, but bearing no date, that "it was whilom in the laws of the English . . . that, if a thane thrived so that he became an eorl, then was he henceforth of eorl-right worthy." ("Ancient Laws," p. 81.[5]) But this passage is wanting in one manuscript, though not in the oldest, and we find, just before it, the old distributive opposition of eorl and ceorl. It is certainly a remarkable exception to the common use of the word eorl in any age, and has led Mr. Thorpe to suppose that the rank of earl could be obtained by landed wealth. The learned editor thinks that "these pieces can not have had a later origin than the period in which they here stand. Some of them are probably much earlier" (p. 76). But the mention of the "Danish law," in p. 79, seems much against an earlier date; and this is so mentioned as to make us think that the Danes were then in subjection. In the time of Edgar eorl had fully acquired its secondary meaning; in its original sense it seems to have been replaced by thane. Certain it is that we find thane opposed to ceorl in the later period of Anglo-Saxon monuments, as eorl is in the earlier—as if the law knew no other broad line of demarcation among laymen, saving always the official dignities and the royal family.[6] And the distinction between the greater and

[5] The references are to the folio edition of "Ancient Laws and Institutes of England," 1840, as published by the Record Commission. I fear this may cause some trouble to those who possess the octavo edition, which is much more common.

[6] "That the thane, at least originally, was a military follower, a holder by military service, seems certain; though in later times the rank seems to have been enjoyed by all great landholders, as the natural concomitant of possession to a certain value. By Mercian law, he appears as a 'twelfhynde' man, his 'wer' being 1,200 shillings. That this dignity ceased from being exclusively of a military character is evident from numerous passages in the laws, where thanes are mentioned in a judicial capacity, and as civil officers." (Thorpe's "Glossary to Ancient Laws," voc. Thegen.)

the lesser thanes was not lost, though they were put on a level as to composition. Thus, in the forest laws of Canute: "Sint jam deinceps quattuor ex liberalioribus hominibus qui habent salvas suas consuetudines, quos Angli thegnes appellant, in qualibet regni mei provincia constituti. Sint sub quolibet eorum quattuor ex mediocribus hominibus, quos Angli lesthegenes nuncupant, Dani vero yoongmen vocant, locati." ("Ancient Laws," p. 183.) Meantime the composition for an earl, whether we confine that word to office or suppose that it extended to the wealthiest landholders, was far higher in the later period than that for a thane, as was also his heriot when that came into use. The heriot of the king's thane was above that of what was called a medial thane, or mesne vassal, the sithcundman, or syxhynder, as I apprehend, of an earlier style.

In the laws of the continental Saxons we find the rank corresponding to the eorlcunde of our own country, denominated edelingi or noble, as opposed to the frilingi or ordinary freemen. This appellation was not lost in England, and was perhaps sometimes applied to nobles; but we find it generally reserved for the royal family.[1] Ethel or noble, sometimes contracted, forms, as is well known, the peculiar prefix to the names of our Anglo-Saxon royal house. And the word atheling was used, not as in Germany for a noble, but a prince; and his composition was not only above that of a thane, but of an alderman. He ranked as an archbishop in this respect, the alderman as a bishop. ("Leges Ethelredi," p. 141.) It is necessary to mention this, lest, in speaking of the words eorl and ceorl as originally distributive, I should seem to have forgotten the distinctive superiority of the royal family. But whether this had always been the case I am not prepared to determine. The aim of the later kings, I mean after Alfred, was to carry the monarchical principle as high as the temper of the nation would permit. Hence they prefer to the name of king, which was associated in all the Germanic nations with a limited power, the more indefinite appellations of imperator and basileus. And the latter of these they borrowed from the Byzantine court, liking it rather better than the other, not merely out of the pompous affectation characteristic of their style in that period, but because, being less intelligible, it served to strike more awe, and also probably because the title of western emperor seemed to be already appropriated in Germany. It was natural that they would endeavour to enhance the superiority of all athelings above the surrounding nobility.

A learned German writer, who distributes freemen into but two classes, considers the ceorl of the Anglo-Saxon laws as corresponding to the ingenuus, and the thrall or esne—that is, slave

[1] Thorpe's "Glossary."

—to the lidus of the Continent. "Adelingus und liber, nobilis und ingenuus, edelingus und frilingus, jarl und karl, stehen hier immer als Stand der freien dem der unfreien, dem servus, litus, lazzus, thrall entgegen." (Grimm, "Deutsche Rechts-Alterthümer," Göttingen, 1828, p. 226, et alibi.) Ceorl, however, he owns to have "etwas befremdendes," something peculiar. "Der Sinn ist bald mas, bald liber; allein colonus, rusticus, ignobilis; die Mitte zwischen nobilis und servus."

It does not appear from the continental laws that the litus, or lidus, was strictly a slave, but rather a cultivator of the earth for a master, something like the Roman colonus, though of inferior estimation.[8] No slave had a composition due to his kindred by law; the price of his life was paid to his lord. By some of the barbaric laws, one third of the composition for a lidus went to the kindred; the remainder was the lord's share. This indicates something above the Anglo-Saxon theow or slave, and yet considerably below the ceorl. The word, indeed, has been puzzling to continental antiquaries; and if, in deference to the authorities of Gothofred and Grimm, we find the lidi in the barbaric læti of the Roman Empire, we can not think these at least to have been slaves, though they may have become coloni. But I am not quite convinced of the identity resting on a slight resemblance of name.

The ceorl, or villanus, as we find him afterward called in "Doomsday," was not generally an independent freeholder; but his condition was not always alike. He might acquire land, and if he did this to the extent of five hides, he became a thane.[9]

[8] Mr. Spence remarks ("Equitable Jurisdiction," p. 51), "In the condition of the ceorls we observe one of the many striking examples of the adaptation of the German to the Roman institutions—the ceorls and servile cultivators or adscriptitii in England, as well as in the continental states, exactly corresponded with the coloni and inquilini of the Roman provinces." Yet he immediately subjoins, "The condition of the rural slaves of the Germans nearly resembled that of the Roman coloni and Anglo-Saxon ceorls," quoting Tacitus, c. 21. But did the Germans at that time adapt their institutions to those of the Romans? Do we not rather see here an illustration of what appears to me the true theory, that similarity of laws and customs may often be traced to natural causes in the state of society rather than to imitation? My notion is, that the Germans, through principles of common sympathy among the same tribe, the Romans, through memory of republican institutions carried on into the empire, repudiated the personal servitude of citizens, while they maintained very strict obligations of prædial tenure; and thus the coloni of the lower empire on the one hand, the lidi and ceorls on the other, were neither absolutely free nor merely slaves.

"In the Lex Frisiorum," says Sir F. Palgrave, in one of his excellent contributions to the "Edinburgh Review" (xxxii, 16), "we find the usual distinctions of nobilis, liber, and litus. The rank of the Teutonic litus has been much discussed; he appears to have been a villein, owing many services to his lord, but above the class of slaves." The word villein, it should be remembered, bore several senses: the litus was below a Saxon ceorl, but he was also above the villein of Bracton and Littleton.

[9] This is not in the laws of Athelstan, to which I have referred in p. 511, nor in any regular statute, but in a kind of brief summary of law, printed by Wilkins and Thorpe. But I think that Sir Francis Palgrave treats this too slightly when he calls it a "traditionary notice of an unknown writer, who says, 'Whilom it was the law of England'; leaving it doubtful whether it were so still, or had been at any definite time." ("Edinb. Rev.," xxxiv, 263.) Though this phrase is once used, it is said also expressly: "If a ceorl be enriched to that degree that he have five hides of land, and any one slay him, let

He required no enfranchisement for this; his own industry might make him a gentleman. This was not the case, at least not so easily, in France. It appears by the will of Alfred, published in 1788, that certain ceorls might choose their own lord; and the text of his law above quoted furnishes some ground for supposing that he extended the privilege to all. The editor of his will says: "All ceorls by the Saxon constitution might choose such man for their landlord as they would" (p. 26). But even though we should think that so high a privilege was conferred by Alfred on the whole class, it is almost certain that they did not continue to enjoy it.

In the Anglo-Saxon charters the Latin words for the cultivators are "manentes" or "casati." Their number is generally mentioned; and sometimes it is the sole description of land, except its title. The French word manant is evidently derived from manentes. There seems more difficulty about casati, which is sometimes used for persons in a state of servitude, sometimes even for vassals (Du Cange). In our charters it does not bear the latter meaning. (See "Codex Diplomaticus," passim; Spence on "Equitable Jurisdiction," p. 50.)

But when we turn over the pages of "Doomsday Book," a record of the state of Anglo-Saxon orders of society under Edward the Confessor, we find another kind of difficulty. New denominations spring up, evidently distinguishable, yet such as no information communicated either in that survey or in any other document enables us definitely and certainly to distinguish. Nothing runs more uniformly through the legal documents antecedent to the conquest than the broad division of freemen into eorls, afterward called thanes, and ceorls. In "Doomsday," which enumerates, as I need hardly say, the inhabitants of every manor, specifying their ranks, not only at the epoch of the survey itself, about 1085, but as they were in the time of King Edward, we find abundant mention of the thanes, generally indeed, but not always in reference to the last-named period. But the word ceorl never occurs. This is immaterial, for by the name villani we have upward of one hundred and eight thousand. And this word is frequently used in the first Anglo-Norman reigns as the equivalent of ceorl. No one ought to doubt that they expressed the same persons. But we find also a very numerous class, above eighty-two thousand, styled bordarii; a word unknown, I apprehend, to any other public document, certainly not used in the laws anterior to the conquest. They must, however, have been also ceorls, distinguished by some legal differ-

him be paid for with 2,000 thrymsas." (Thorpe, p. 79.) This, a few sentences before, is named as the composition for a thane in the "Danelage." And, indeed, though no king's name appears, I have little doubt that these are real statutes, collected probably by some one who has inserted a little of his own.

ence, some peculiarity of service or tenure, well understood at the time. A small number are denominated coscetz, or cosceti; a word which does, in fact, appear in one Anglo-Saxon document. There are also several minor denominations in "Doomsday," all of which, as they do not denote slaves, and certainly not thanes, must have been varieties of the ceorl kind. The most frequent of these appellations is "cotarii."

But, besides these peasants, there are two appellations which it is less easy, though it would be more important, to define. These are the liberi homines and the socmanni. Of the former, Sir Henry Ellis, to whose indefatigable diligence we owe the only real analysis of "Doomsday Book" that has been given, has counted up about 12,300; of the latter, about 23,000; forming together about one eighth of the whole population—that is, of male adults. This, it must be understood, was at the time of the survey; but there is no appearance, as far as I have observed, that any material difference in the proportion of these respective classes, or of those below them, had taken place. The confiscation fell on the principal tenants. It is remarkable that in Norfolk alone we have 4,487 liberi homines and 4,588 socmen —the whole enumerated population being 27,087. But in Suffolk, out of a population of 20,491, we find 7,470 liberi homines, with 1,060 socmen. Thus these two counties contained almost all the liberi homines of the kingdom. In Lincolnshire, on the other hand, where 11,504 are returned as socmen, the word liber homo does not occur. These Lincolnshire socmen are not, as usual in other counties, mentioned among occupiers of the demesne lands, but mingled with the villeins and bordars; sometimes not standing first in the enumeration, so as to show that, in one county, they were both a more numerous and more subordinate class than in the rest of the realm.[10]

The concise distinction between what we should call freehold and copyhold is made by the forms of entering each manor throughout "Doomsday Book." Liberi homines invariably, and socmen I believe, except in Lincolnshire, occupied the one, villani and bordarii the other. Hence liberum tenementum and villenagium. What, then, in Anglo-Saxon language, was the kind of the two former classes? They belong, it will be observed, almost wholly to the Danish counties; not one of either denomination appears in Wessex, as will be seen by reference to Sir H. Ellis's abstract. Were they thanes or ceorls, or a class

[10] Socmen are returned in not a few instances as sub-tenants of whole manors, but only in Cambridgeshire and some neighbouring counties. (Ellis's "Introd. to Doomsday," ii, 389.) But this could, it seems, have only originated in the phraseology of different commissioners; for the counties in which we find socmen so much elevated had not belonged to the same Anglo-Saxon kingdom; some were East-Anglian, some Mercian, some probably, as Hertfordshire, of either the Kent or Wessex law.

distinct from both? What was their were? We can not think that a poor cultivator of a few acres, though of his own land, was estimated at twelve hundred shillings, like a royal thane. The intermediate composition of the sixhyndman would be a convenient guess; but unfortunately this seems not to have existed in the "Danelage." We gain no great light from the laws of Edward the Confessor, which fix the manbote, or fine, to the lord for a man slain, regulated according to the were due to his children. Manbote, in "Danelage," "de villano et de sokemanno 12 oras; de liberis hominibus, tres marcas" (c. 12). Thus, in the Danish counties, of which Lincolnshire was one, the socman was estimated like a villanus, and much lower than a liber homo. The ora is said to have been one eighth of a mark, consequently the liber homo's manbote was double that of the villein or socman. If this bore a fixed ratio to the were, we have a new and unheard-of rank who might be called fourhyndmen. But such a distinction is never met with. It would not in itself be improbable that the liberi homines who occupied freehold lands, and owned no prædial service, should be raised in the composition for their lives above common ceorls. But in these inquiries new difficulties are always springing forth.

We must, upon the whole, I conceive, take the socmen for twyhyndi, for ceorls more fortunate than the rest, who had acquired some freehold land, or to whose ancestors possibly it had been allotted in the original settlement. It indicates a remarkable variety in the condition of these East Anglian counties, Norfolk and Suffolk, and a more diffused freedom in their inhabitants. The population, it must strike us, was greatly higher, relatively to their size, than in any other part of England; and the multitude of small manors and of parish churches, which still continue, bespeaks this progress. The socmen, as well as the liberi homines, in whose condition there may have been little difference, except in Lincolnshire, where we have seen that, for whatever cause, those denominated socmen were little, if at all, better than the villani, were all commended; they had all some lord, though bearing to him a relation neither of fief nor of villenage; they could in general, though with some exceptions, alienate their lands at pleasure; it has been thought that they might pay some small rent in acknowledgment of commendation; but the one class undoubtedly, and probably the other, were freeholders in every legal sense of the word, holding by that ancient and respectable tenure, free and common socage, or in a manner at least analogous to it. Though socmen are chiefly mentioned in the "Danelage," other obscure denominations of occupiers occur in Wessex and Mercia, which seem to have denoted a similar class. But the style of "Doomsday" is

so concise, and so far from uniform, that we are very liable to be deceived in our conjectural inferences from it.

It may be remarked here that many of our modern writers draw too unfavourable a picture of the condition of the Anglo-Saxon ceorl. Few, indeed, fall into the capital mistake of Mr. Sharon Turner, by speaking of him as legally in servitude, like the villein of Bracton's age. But we often find a tendency to consider him as in a very uncomfortable condition, little caring "to what lion's paw he might fall," as Bolingbroke said in 1745, and treated by his lord as a miserable dependant. Half a century since, in the days of Sir William Jones, Granville Sharp, and Major Cartwright, the Anglo-Saxon constitution was built on universal suffrage; every man in his tithing a partaker of sovereignty, and sending from his rood of land an annual representative to the witenagemot. Such a theory could not stand the first glimmerings of historical knowledge in a mind tolerably sound. But while we absolutely deny political privileges of this kind to the ceorl, we need not assert his life to have been miserable. He had very definite legal rights, and acknowledged capacities of acquiring more; that he was sometimes exposed to oppression is probable enough; but, in reality, the records of all kinds that have descended to us do not speak in such strong language of this as we may read in those of the Continent. We have no insurrection of the ceorls, no outrages by themselves, no atrocious punishment by their masters, as in Normandy. Perhaps we are a little too much struck by their obligation to reside on the lands which they cultivated; the term ascriptus glebæ denotes, in our apprehension, an ignoble servitude. It is, of course, inconsistent with our modern equality of rights; but we are to remember that he who deserted his land, and consequently his lord, did so in order to become a thief. Hlafordles men, of whom we read so much, were invariably of this character. What else, indeed, could he become? Children have an idle play, to count buttons, and say, Gentleman, apothecary, ploughman, thief. Now this, if we consider the second as representative of burgesses in towns, is actually a distributive enumeration, setting aside the clergy of the Anglo-Saxon population; a thane, a burgess, a ceorl, a hlafordles man—that is, a man without land, lord, or law, who lived upon what he could take. For the sake of protecting the honest ceorl from such men, as well as of protecting the lord in what, if property be regarded at all, must be protected, his rights to services legally due, it was necessary to restrain the cultivator from quitting his land. Exceptions to this might occur, as we find among the liberi homines and others in "Doomsday"; but it was the general rule. We might also ask whether a lessee for years at present is not in one sense ascriptus

glebæ? It is true that he may go wherever he will, and, if he continue to pay his rent and perform his covenants, no more can be said. But if he does not this, the law will follow his person, and, though it can not force him to return, will make it by no means his interest to desert the premises. Such remedies as the law now furnishes were not in the power of the Saxon landlord; but all that any lord could desire was to have the services performed, or to receive a compensation for them.

IV, page 512.—Those who treat this opinion as chimerical, and seem to suppose that a very large portion of the people of England, during the Anglo-Saxon period, must have been of British descent, do not, I think, sufficiently consider—first, the exterminating character of barbarous warfare, not here confined, as in Gaul, to a single and easy conquest, but protracted for two centuries with the most obstinate resistance of the natives; secondly, the facilities which the possessions of the Welsh and Cumbrian Britons gave to their countrymen for retreat; and, thirdly, the natural increase of population among the Saxons, especially when settled in a country already reduced into a state of culture. Nor can the successive migrations from Germany and Norway be shown to have been insignificant. Nothing can be scantier than our historical materials for the fifth and sixth centuries. We can not also but observe that the silence of the Anglo-Saxon records, at a later time, as to Welsh inhabitants, except in a few passages, affords a presumption that they were not very considerable. Yet these passages, three or four in number (I do not include those which obviously relate to the independent Welsh, whether Cambrian or Cumbrian), repel the hypothesis that they may have been wholly overlooked and confounded with the ceorls. Their composition was less than that of the ceorl in Wessex and Northumbria; would not this have been mentioned in Kent if they had been found there?

It is by no means unimportant in this question that we find no mention of bishops or churches remaining in the parts of England occupied by the Saxons before their conversion. If a large part of the population was British, though in subjection, what religion did they profess? If it is said that the worshippers of Thor persecuted the Christian priesthood, why have we no records of it in hagiology? Is it conceivable that all alike, priests and people, of that ancient church, pusillanimously relinquished their faith? Sir F. Palgrave, indeed, meets this difficulty by supposing that the doctrines of Christianity were never cordially embraced by the British tribes, nor had become the national religion. ("Engl. Commonwealth," i, 154.) Perhaps this was in some measure the case, though it must be received with much

limitation; for the retention of heathen superstitions was not incompatible in that age with a cordial faith; but it will not account for the disappearance of the original clergy in the English kingdoms. Their persecution, which I do not deny, though we have no evidence of it, would be part of the exterminating system; they fled before it into the safe quarters of Wales. And to obtain the free exercise of their religion was probably an additional motive with the nation to seek liberty where it was to be found.

It must have struck every one who has looked into "Doomsday Book" that we find for the most part the same manors, the same parishes, and known by the same names, as in the present age. England had been as completely appropriated by Anglo-Saxon thanes as it was by the Normans who supplanted them. This, indeed, only carries us back to the eleventh century. But in all charters with which the excellent "Codex Diplomaticus" supplies us we find the boundaries assigned; and these, if they do not establish the identity of manors as well as "Doomsday Book," give us at least a great number of local names, which subsist, of course with the usual changes of language, to this day. If British names of places occur, it is rarely, and in the border counties, or in Cornwall. No one travelling through England would discover that any people had ever inhabited it before the Saxons, save so far as the mighty Rome has left traces of her empire in some enduring walls, and a few names that betray the colonial city, the Londinium, the Camalodunum, the Lindum. And these names show that the Saxons did not systematically innovate, but often left the appellations of places where they found them given. Their own favourite terminations were ton and by; both words denoting a village or township, like ville in French.[11] In each of these there gradually rose a church, and the ecclesiastical division for the most part corresponds to the civil; though to this, as is well known, there are frequent exceptions. The central point of every township or manor was its lord, the thane to whose court the socagers and ceorls did service; we may believe this to have been so from the days of the Heptarchy, as it was in those of the Confessor.

[11] The word tun denotes orginally any inclosure. "But its more usual, though restricted sense, is that of a dwelling, a homestead, the house and inland; all, in short, that is surrounded and bounded by a hedge or fence. It is thus capable of being used to express what we mean by the word town, viz., a large collection of dwellings; or, like the Scottish town, even a solitary farm-house. It is very remarkable that the largest proportion of the names of places among the Anglo-Saxons should have been formed with this word, while upon the continent of Europe it is never used for such a purpose. In the first two volumes of the 'Codex Diplomaticus' Dr. Lee computes the proportion of local names compounded with tun at one eighth of the whole number; a ratio which unavoidably leads us to the conclusion that inclosures were as much favoured by the Anglo-Saxons as they were avoided by their German brethren bevond the sea." (Preface to Kemble's "Codex Diplom.," vol. iii, p. xxxix.)

The servi enumerated in "Doomsday Book" are above twenty-five thousand, or nearly one eleventh part of the whole. These seem generally to have been domestic slaves, and partly employed in tending the lord's cattle or swine, as Gurth, whom we all remember, the δῖος ὑφορβὸς of the thane Cedric, in "Ivanhoe." They are never mentioned as occupiers of land, and have nothing to do with the villeins of later times. A genuine Saxon, as I have said, could only become a slave by his own or his forefather's default, in not paying a weregild, or some legal offence; and of these there might have been many. The few slaves whose names Mr. Turner has collected from Hickes and other authorities appear to be all Anglo-Saxon. ("Hist. of Anglo-Saxons," vol. iii, p. 92.) Several others are mentioned in charters quoted by Mr. Wright in the thirtieth volume of the "Archæologia," p. 220. But the higher proportion which servi bore to villani and bordarii—that is, free ceorls—in the western counties, those in Gloucestershire being almost one third, may naturally induce us to suspect that many were of British origin; and these might be sometimes in prædial servitude. All inference, however, from the sentence in "Doomsday," as to the particular state of the enumerated inhabitants, must be conjecturally proposed.

V, page 514.—The constituent parts of the witenagemot can not be certainly determined, though few parts of the Anglo-Saxon polity are more important. A modern writer espouses the more popular theory. "There is no reason extant for doubting that every thane had the right of appearing and voting in the witenagemot, not only of his shire, but of the whole kingdom, without, however, being bound to personal attendance, the absent being considered as tacitly assenting to the resolutions of those present." (Lappenberg, "Hist. of England," vol. ii, p. 317.) Palgrave, on the other hand, adheres to the testimony of the "Historia Eliensis," that forty hides of land were a necessary qualification; which, of course, would have excluded all but very wealthy thanes. He observes, and I believe with much justice, that "proceres terræ" is a common designation of those who composed a curia regis synonymous, as he conceives, with the witenagemot. Mr. Thorpe ingeniously conjectures that "inter proceres terræ enumerari" was to have the rank of an earl; on the ground that five hides of land was a qualification for a common thane, whose heriot, by the laws of Canute, was to that of an earl as one to eight. ("Ancient Laws of Anglo-Saxons," p. 81.) Mr. Spence supposes the rank annexed to forty hides to have been that of king's thane. ("Inquiry into Laws of Europe," p. 311.) But they were too numerous for so high a qualification.

Mr. Thorpe explains the word witenagemot thus: "The supreme council of the nation, or meeting of the witan. This assembly was summoned by the king; and its members, besides the archbishop or archbishops, were the bishops, aldermen, duces, eorls, thanes, abbots, priests, and even deacons. In this assembly, laws, both secular and ecclesiastical, were promulgated and repealed; and charters of grants made by the king confirmed and ratified. Whether this assembly met by royal summons, or by usage at stated periods, is a point of doubt." (Glossary to "Ancient Laws.") This is not remarkably explicit: aldermen are distinguished from earls, and duces, an equivocal word, from both;[12] and the important difficulty is slurred over by a general description, thanes. But what thanes? remains to be inquired.

The charters of all Anglo-Saxon sovereigns are attested, not only by bishops and abbots, but by laymen, described, if by any Saxon appellation, as aldermen, or as thanes. Their number is not very considerable; and some appear hence to have inferred that only the superior or royal thanes were present in the witenagemot. But, as the signatures of the whole body could not be required to attest a charter, this is far too precarious an inference. Few, however, probably are found to believe that the lower thanes flocked to the national council, whatever their rights may have been; and if we have no sufficient proof that any such privileges had been recognised in law or exercised in fact, if we are rather led to consider the sithcundman, or sixhynder, as dependent merely on his lord, in something very analogous to a feudal relation, we may reasonably doubt the strong position which Lappenberg, though following so many of our own antiquaries, has laid down. Probably the traditions of the Teutonic democracy led to the insertion of the assent of the people in some of the Anglo-Saxon laws. But it is done in such a manner as to produce a suspicion that no substantial share in legislation had been reserved to them. Thus, in the preamble of the laws of Withræd, about 696, we read, "The great men decreed, with the suffrages of all, these dooms." Ina's laws are enacted "with all my ealdormen, and the most distinguished witan of my people." Alfred has consulted his "witan." And this is the uniform word in all later laws in Anglo-Saxon. Canute's, in Latin, run, "Cum consilio primariorum meorum." We have

[12] Dux appears to be sometimes used in the subscription of charters for thane, more commonly for alderman. Thane is generally, in Latin, minister. ("Codex Diplomat.," passim.) Some have supposed dux to signify, at least occasionally, a peculiar dignity, called, in Anglo-Saxon, Heretoch (herzog, Germ.). This word frequently occurs in the later period. Mr. Thorpe says: "This title, among the Anglo-Saxons, was, as it implies, given originally to the leader of an army; but in the latter days of the monarchy it seems to have become hereditary in the families of those on whom the government of the provinces formed out of the kingdoms of the Heptarchy were bestowed, and was sometimes used synonymously with those of ealdorman and eorl." ("Glossary," voc. Heretoga.)

not a hint of any numerous or popular body in the Anglo-Saxon code.

Sir F. Palgrave (i, 637) supposes that the laws enacted in the witenagemot were not valid till accepted by the legislatures of the different kingdoms. This seems a paradox, though supported with his usual learning and ingenuity. He admits that Edgar "speaks in the tone of prerogative, and directs his statutes to be observed and transmitted by writ to the aldermen of the other subordinate states" (p. 638). But I must say that this is not very exact. The words in Thorpe's translation are: "And let many writings be written concerning these things, and sent both to Ælfere, alderman, and to Æthelwine, alderman, and let them [send] in every direction, that this ordinance be known to the poor and rich" (p. 118). "And yet," Sir F. Palgrave proceeds, "in defiance of this positive injunction, the laws of Edgar were not accepted in Mercia till the reign of Canute the Dane." For this, however, he cites no authority, and I do not find it in the Anglo-Saxon laws. Edgar says: "And I will that secular rights stand among the Danes with as good laws as they best may choose. But with the English, let that stand which I and my witan have added to the dooms of my forefathers, for the behoof of all the people. Let this ordinance, nevertheless, be common to all the people, whether English, Danes, or Britons, on every side of my dominion." (Thorpe's "Ancient Laws," p. 116.) But what does this prove as to Mercia? The inference is, that Edgar, when he thought any particular statute necessary for the public weal, enforced it on all his subjects, but did not generally meddle with the Danish usages.

"The laws of the glorious Athelstan had no effect in Kent, the dependent appanage of his crown, until sanctioned by the witan of the shire." It is certainly true that we find a letter addressed to the king in the name of "episcopi tui de Kancia, et omnes Cantescyre thaini, comites et villani," thanking him "quod nobis de pace nostra præcipere voluisti et de commodo nostro quærere et consulere, quia magnum inde nobis est opus divitibus et pauperibus." But the whole tenor of this letter, which relates to the laws enacted at the witenagemot, or "grand synod" of Greatanlea (supposed near Andover), though it expresses approbation of those laws, and repeats some of them with slight variations, does not, in my judgment, amount to a distinct enactment of them; and the final words are not very legislative. "Precamur, Domine, misericordiam tuam, si in hoc scripto alterutrum est vel nimis vel minus, ut hoc emendari jubeas secundum velle tuum. Et nos devote parati sumus ad omnia quæ nobis præcipere velis quæ unquam aliquatenus implere valeamus" (p. 91).

It is, moreover, an objection to considering this as a formal enactment by the witan of the shire, that it runs in the names of "thaini, comites et villani." Can it be maintained that the ceorls ever formed an integrant element of the legislature in the kingdom of Kent? It may be alleged that their name was inserted, though they had not been formally consenting parties, as we find in some parliamentary grants of money much later. But this would be an arbitrary conjecture, and the terms "omnes thaini," etc., are very large. By comites we are to understand, not earls, who in that age would not have been spoken of distinctly from thanes, at least in the plural number, nor postponed to them, but thanes of the second order, sithcundmen, sixhynder. Alfred translates "comes" by "gesith," and the meaning is nearly the same.

In the next year we have a very peremptory declaration of the exclusive rights of the king and his witan. "Athelstan, king, makes known that I have learned that our 'frith' (peace) is worse kept than is pleasing to me, or as at Greatanlea was ordained, and my witan say that I have too long borne with it. Now, I have decreed, with the witan who were with me at Exeter at midwinter, that they [the frith-breakers] shall all be ready, themselves and with wives and property, and with all things, to go whither I will (unless from thenceforth they shall desist), on this condition, that they never come again to the country. And if they shall ever again be found in the country, that they be as guilty as he who may be taken with stolen goods (handhabbende)."

Sir Francis Palgrave, a strenuous advocate for the antiquity of municipal privileges, contends for aldermen, elected by the people in boroughs, sitting and assenting among the king's witan. ("Edinb. Rev.," xxvi, 26.) "Their seats in the witenagemot were connected as inseparably with their office as their duties in the folkmote. Nor is there any reason for denying to the aldermen of the boroughs the rights and rank possessed by the aldermen of the hundreds; and they, in all cases, were equally elected by the commons." The passage is worthy of consideration, like everything which comes from this ingenious and deeply read author. But we must be staggered by the absence of all proof, and particularly by the fact that we do not find aldermen of towns, so described, among the witnesses of any royal charter. Yet it is possible that such a privilege was confined to the superior thanes, which weakens the inference. We can not pretend, I think, to deny, in so obscure an inquiry, that some eminent inhabitants (I would here avoid the ambiguous word citizens) of London, or even other cities, might occasionally be present in the witenagemot. But were not these, as we may confidently

assume, of the rank of thane? The position in my text is, that ceorls or inferior freemen had no share in the deliberations of that assembly. Nor would these aldermen, if actually present, have been chosen by the court-leet for that special purpose, but as regular magistrates. "Of this great council," Sir F. Palgrave says in another place ("Edinb. Rev.," xxxiv, 336), "as constituted anterior to the conquest, we know little more than the name." The greater room, consequently, for hypothesis. In a later work, as has been seen above, Sir F. Palgrave adopts the notion that forty hides of land were the necessary qualification for a seat in the witenagemot. This is almost inevitably inconsistent with the presence, as by right, of aldermen elected by boroughs. We must conclude, therefore, that he has abandoned that hypothesis. Neither of the two is satisfactory to my judgment.

VI, page 516.—The hundred court, and indeed the hundred itself, do not appear in our Anglo-Saxon code before the reign of Edgar, whose regulations concerning the former are rather full. But we should be too hasty in concluding that it was then first established. Nothing in the language of those laws implies it. A theory has been developed in a very brilliant and learned article of the "Edinburgh Review" for 1822 (xxxvi, 287), justly ascribed to Sir F. Palgrave, which deduces the hundred from the hærad of the Scandinavian kingdoms, the integral unit of the Scandinavian commonwealths. "The Gothic commonwealth is not a unit of which the smaller bodies politic are fractions. They are the units, and the commonwealth is the multiple. Every Gothic monarchy is in the nature of a confederation. It is composed of towns, townships, shires, bailiwicks, burghs, earldoms, dukedoms, all in a certain degree strangers to each other, and separated in jurisdiction. Their magistrates, therefore, in theory at least, ought not to emanate from the sovereign. . . . The strength of the state ascends from region to region. The representative form of government, adopted by no nation but the Gothic tribes, and originally common to them all, necessarily resulted from this federative system, in which the sovereign was compelled to treat the component members as possessing a several authority."

The hundred was as much, according to Palgrave, the organic germ of the Anglo-Saxon commonwealth, as the hærad was of the Scandinavian. Thus, the leet, held every month, and composed of the tithingmen or head-boroughs, representing the inhabitants, were both the inquest and the jury, possessing jurisdiction, as he conceives, in all cases civil, criminal, and ecclesiastical, though this was restrained after the conquest. William

forbade the bishop or archdeacon to sit there; and by the seventeenth section of Magna Charta no pleas of the crown could be held before the sheriff, the constable, the coroner, or other bailiff (inferior officer) of the crown. This was intended to secure for the prisoner, on charges of felony, a trial before the king's justices on their circuits; and, from this time, if not earlier, the hundred court was reduced to insignificance. That, indeed, of the county, retaining its civil jurisdiction, as it still does in name, continued longer in force. In the reign of Henry I, or when the customal (as Sir F. Palgrave denominates what are usually called his laws) was compiled (which, in fact, was a very little later), all of the highest rank were bound to attend at it. And though the extended jurisdiction of the curia regis soon cramped its energy, we are justified in saying that the proceedings before the justices of assize were nearly the same in effect as those before the shiremote. The same suitors were called to attend, and the same duties were performed by them, though under different presidents. The grand jury, it may be remarked, still corresponds, in a considerable degree, to the higher class of landholders bound to attendance in the county court of the Saxon and Norman periods.

I must request the reader to turn, if he is not already acquainted with it, to this original disquisition in the "Edinburgh Review." The analogies between the Scandinavian and Anglo-Saxon institutions are too striking to be disregarded, though some conclusions may have been drawn from them to which we can not thoroughly agree. If it is alleged that we do not find in the ancient customs of Germany that peculiar scale of society which ascends from the hundred, as a monad of self-government, to the collective unity of a royal commonwealth, it may be replied that we trace the essential principle in the pagus, or gau, of Tacitus, though perhaps there might be nothing numerical in that territorial direction; that we have, in fact, the centenary distribution under peculiar magistrates in the old continental laws and other documents; and that a large proportion of the inhabitants of England, ultimately coalescing with the rest, so far at least as to acknowledge a common sovereign, came from the very birthplace of Scandinavian institutions. In the "Danelage" we might expect more traces of a northern policy than in the south and west, and perhaps they may be found.[18] Yet we are not to disregard the effect of countervailing agencies, or the evidence of our own records, which attest, as I must think, a far greater unity of power, and a more paramount authority in the crown, throughout the period which we denominate Anglo-Saxon, than, according to the scheme of a Scandinavian commonwealth

[18] Vide "Leges Ethelredi."

sketched in the "Edinburgh Review," could be attributed to that very ancient and rude state of society. And there is a question that might naturally be asked, how it happens that, if the division by hundreds and the court of the hundred were parts so essential of the Anglo-Saxon commonwealth that all its unity is derived from them, we do not find any mention of either in the numerous laws and other documents which remain before the reign of Edgar in the middle of the tenth century. But I am far from supposing that hundreds did not exist in a much earlier period.

VII, page 518.—"The judicial functions of the Anglo-Saxon monarchs were of a twofold nature; the ordinary authority which the king exercised, like the inferior territorial judges, differing, perhaps, in degree, though the same in kind; and the prerogative supremacy, pervading all the tribunals of the people, and which was to be called into action when they were unable or unwilling to afford redress. The jurisdiction which he exercised over his own thanes was similar to the authority of any other hlaford; it resulted from the peculiar and immediate relation of the vassal to the superior. Offences committed in the fyrd or army were punished by the king, in his capacity of military commander of the people. He could condemn the criminal, and decree the forfeiture of his property, without the intervention of any other judge or tribunal. Furthermore, the rights which the king had over all men, though slightly differing in 'Danelage' from the prerogative which he possessed in Wessex and Mercia, allowed him to take cognizance of almost every offence accompanied by violence and rapine; and among these 'pleas of the crown' we find the terms, so familiar to the Scottish lawyer and antiquary, of 'hamsoken' and 'flemen firth,' or the crimes of invading the peaceful dwelling, and harbouring the outlawed fugitive." ("Rise and Progress of Engl. Commonwealth," vol. i, p. 282.)

Edgar was renowned for his strict execution of justice. "Twice in every year, in the winter and in the spring, he made the circuit of his dominions, protecting the lowly, rigidly examining the judgments of the powerful in each province, and avenging all violations of the law." (Id., p. 286.) He infers from some expressions in the history of Ramsey (Gale, iii, 441)—"cum more assueto rex Cnuto regni fines peragraret"—that these judicial eyres continued to be held. It is not at all improbable that such a king as Canute would revive the practice of Edgar; but it was usual in all the Teutonic nations for the king, once after his accession, to make the circuit of his realm. Proofs of this are given by Grimm, p. 237.

In this royal court the sovereign was at least assisted by his "witan," both ecclesiastical and secular. Their consent was probably indispensable; but the monarchical element of Anglo-Saxon polity had become so vigorous in the tenth and eleventh centuries that we can hardly apply the old Teutonic principle expressed by Grimm. "All judicial power was exercised by the assembly of freemen, under the presidence of an elective or hereditary superior." ("Deutsche Rechts-Alterth.," p. 749.) This was the case in the county court, and perhaps had once been so in the court of the king.

The analogies of the Anglo-Saxon monarchy to that of France during the same period, though not uniformly to be traced, are very striking. The regular jurisdiction over the king's domanial tenants, that over the vassals of the crown, that which was exercised on denial of justice by the lower tribunals, meet us in the two first dynasties of France, and in the early reigns of the third. But they were checked in that country by the feudal privileges, or assumptions of privilege, which rendered many kings of these three races almost impotent to maintain any authority. Edgar and Canute, or even less active princes, had never to contend with the feudal aristocracy. They legislated for the realm; they wielded its entire force; they maintained, not always thoroughly, but in right and endeavour they failed not to maintain, the public peace. The scheme of the Anglo-Saxon commonwealth was better than the feudal; it preserved more of the Teutonic character, it gave more to the common freeman as well as to the king. The love of Utopian romance, and the bias in favour of a democratic origin for our constitution, have led many to overstate the freedom of the Saxon commonwealth; or rather, perhaps, to look less for that freedom where it is really best to be found, in the administration of justice, than in representative councils, which authentic records do not confirm. But in comparison to France or Italy, perhaps to Germany, with the exception of a few districts which had preserved their original customs, we may reckon the Anglo-Saxon polity, at the time when we know most of it, from Alfred to the conquest, rude and defective as it must certainly appear when tried by the standard of modern ages, not quite unworthy of those affectionate recollections which long continued to attach themselves to its name.

The most important part, perhaps, of the jurisdiction exercised by the Anglo-Saxon kings, as by those of France, was ob defectum justitiæ, where redress could not be obtained from an inferior tribunal, a case of not unusual occurrence in those ages. It forms, as has been shown in the second chapter, a conspicuous feature in that feudal jurisprudence which we trace in the estab-

lishments of St. Louis and in Beaumanoir. Nothing could have a more decided tendency to create and strengthen a spirit of loyalty toward the crown, a trust in its power and paternal goodness. "The sources of ordinary jurisdiction," says Sir F. Palgrave, "however extensive, were less important than the powers assigned to the king as the lord and leader of his people; and by which he remedied the defects of the legislation of the state, speaking when the law was silent, and adding new vigour to its administration. It was to the royal authority that the suitor had recourse when he could not obtain 'right at home,' though this appeal was not to be had until he had thrice 'demanded right' in the hundred. If the letter of the law was grievous or burdensome, the alleviation was to be sought only from the king.[14] All these doctrines are to be discerned in the practice of the subsequent ages; in this place it is only necessary to remark that the principle of law which denied the king's help in civil suits, until an endeavour had first been made to obtain redress in the inferior courts, became the leading allegation in the 'Writ of Right Close'; this prerogative process being founded upon the default of the lord's court, and issued lest the king should hear any more complaints of want of justice. And the alleviation of 'the heavy law' is the primary source of the authority delegated by the king to his council, and afterward assumed by his chancery and chancellor, and from whence our courts of equity are derived." ("Rise and Progress of English Commonwealth," vol. i, p. 203.) I hesitate about this last position; the "heavy law" seems to have been the legal fine or penalty for an offence. ("Leges Edgar," ubi suprà.)

That there was a select council of the Anglo-Saxon kings, distinct from the witenagemot, and in constant attendance upon them, notwithstanding the opinion of Madox and of Allen ("Edinb. Rev.," xxxv, 8), appears to be indubitable. "From the numerous charters granted by the kings to the Church, and to their vassals, which are dated from the different royal vills or manors wherein they resided in their progresses through their dominions, it would appear that there were always a certain number of the optimates in attendance on the king, or ready to obey his summons, to act as his council when circumstances required it. .This may have been what afterward appears as the select council." (Spence's "Equitable Jurisdict.," p. 72.) The charters published by Mr. Kemble in the "Codex Ang.-Sax. Diplomaticus" are attested by those whom we may suppose to have been the members of this council, with the exception of some, which, by the number of witnesses and the importance of the matter, were probably granted in the witenagemot.

[14] Edgar II, 2; Canute II, 16; Ethelred, 17.

The jurisdiction of the king is illustrated by the laws of Edgar. "Now this is the secular ordinance which I will that it be held. This, then, is just what I will: that every man be worthy of folk-right, as well poor as rich; and that righteous dooms be judged to him; and let there be that remission in the 'bot' as may be becoming before God and tolerable before the world. And let no man apply to the king in any suit, unless he at home may not be worthy of law, or can not obtain law. If the law be too heavy, let him seek a mitigation of it from the king; and for any botworthy crime let no man forfeit more than his 'wer.'" (Thorpe's "Ancient Laws," p. 112.) Bot is explained in the "Glossary," "amends, atonement, compensation, indemnification."

This law seems not to include appeals of false judgment, in the feudal phrase. But they naturally come within the spirit of the provision; and "injustum judicium" is named in "Leges Henr. Primi," c. 10, among the exclusive pleas of the crown. It does not seem clear to me, as Palgrave assumes, that the disputes of royal thanes with each other came before the king's court. Is there any ground for supposing that they were exempt from the jurisdiction of the county court? Doubtless, when powerful men were at enmity, no petty court could effectively determine their quarrel, or prevent them from having recourse to arms; such suits would fall naturally into the king's own hands. But the jurisdiction might not be exclusively his; nor would it extend, as of course, to every royal thane; some of whom might be amenable, without much difficulty, to the local courts. It is said in the seventh chapter of the laws of Henry I, which are Anglo-Saxon in substance, concerning the business to be transacted in the county court, where bishops, earls, and others, as well as "barons and vavassors"—that is, king's thanes and inferior thanes in the older language of the law—were bound to be present: "Agantur itaque primo debita verè Christianitatis jure; secundo regis placita; postremo causæ singulorum dignis satisfactionibus expleantur." The notion that the king's thanes resorted to his court, as to that of their lord or common superior, is merely grounded on feudal principles; but the great constitutional theory of jurisdiction in Anglo-Saxon times, as Sir F. Palgrave is well aware, was not feudal, but primitive Teutonic.

"The witenagemot," says Allen, "was not only the king's legislative assembly, but his supreme court of judicature." ("Edinb. Rev.," xxxv, 9; referring for proofs to Turner's "History of the Anglo-Saxons.") Nothing can be less questionable than that civil as well as criminal jurisdiction fell within the province of this assembly. But this does not prove that there was not also a less numerous body, constantly accessible, following

the king's person, and though not, perhaps, always competent in practice to determine the quarrels of the most powerful, ready to dispose of the complaints which might come before it from the hundred or county courts for delay of justice or manifest wrong. Sir F. Palgrave's arguments for the existence of such a tribunal before the conquest, founded on the general spirit and analogy of the monarchy, are of the greatest weight. But Mr. Allen had acquired too much a habit of looking at the popular side of the constitution, and, catching at every passage which proved our early kings to have been limited in their prerogative, did not quite attend enough to the opposite scale.

VIII, page 521.—Though the following note relates to a period subsequent to the conquest, yet, as no better opportunity will occur for following up the very interesting inquiry into the origin and progress of trial by jury, I shall place here what appears most worthy of the reader's attention. And, before we proceed, let me observe that the twelve thanes, mentioned in the law of Ethelred, quoted in the text (p. 270), appear to have been clearly analogous to our grand juries. Their duties were to present offenders; they corresponded to the scabini or échevins of the foreign laws. Palgrave has, with his usual clearness, distinguished both compurgators, such as were previously mentioned in the text, and these thanes from real jurors. "Trial by compurgators offers many resemblances to a jury; for the dubious suspicion that fell upon the culprit might often be decided by their knowledge of his general conduct and conversation, or of some fact or circumstance which convinced them of his innocence. The thanes or échevins may equally be confounded with a jury; since the floating, customary, unwritten law of the country was a fact to be ascertained from their belief and knowledge, and, unlike the suitors, they were sworn to the due discharge of their duty. Still, each class will be found to have some peculiar distinction. Virtually elected by the community, the échevins constituted a permanent magistracy, and their duty extended beyond the mere decision of a contested question; but the jurors, when they were traversers, or triers of the issue, were elected by the king's officers, and impanelled for that time and turn. The juror deposed to facts, the compurgator pledged his faith." ("English Commonwealth," i, 248.)

In the Anglo-Saxon laws we find no trace of the trial of offences by the judgment, properly so called, of peers, though civil suits were determined in the county court. The party accused by the twelve thanes, on their presentment, or perhaps by a single person, was to sustain his oath of innocence by that of compurgators or by some mode of ordeal. It has been gener-

ally doubted whether trial by combat were known before the conquest; and distinct proofs of it seem to be wanting. Palgrave, however, thinks it rather probable that, in questions affecting rights in land, it may sometimes have been resorted to (p. 224). But let us now come to trial by jury, both in civil and criminal proceedings, as it slowly grew up in the Norman and later periods, erasing from our minds all prejudices about its English original, except in the form already mentioned of the grand inquest for presentment of offenders, and in that which the passage quoted in the text from the history of Ramsey furnishes—the reference of a suit already commenced, by consent of both parties, to a select number of sworn arbitrators. It is to be observed that the thirty-six thanes were to be upon oath, and consequently came very near to a jury.

The period between the conquest and the reign of Henry II is one in which the two nations, not yet blended by the effects of intermarriage, and retaining the pride of superiority on the one hand, the jealousy of a depressed but not vanquished spirit on the other, did not altogether fall into a common law. Thus we find in a law of the Conqueror that, while the Englishman accused of a crime by a Norman had the choice of trial by combat or by ordeal, the Norman must meet the former if his English accuser thought fit to encounter him; but if he dared not, as the insolence of the victor seems to presume, it was sufficient for the foreigner to purge himself by the oaths of his friends, according to the custom of Normandy. (Thorpe, p. 210.)

We have next, in the "Leges Henrici Primi," a treatise compiled, as I have mentioned, under Stephen, and not intended to pass for legislative,[18] numerous statements as to the usual course of procedure, especially on criminal charges. These are very carelessly put together, very concise, very obscure, and in several places very corrupt. It may be suspected, and can not be disproved, that in some instances the compiler has copied old statutes of the Anglo-Saxon period, or recorded old customs which had already become obsolete. But be this as it may, the "Leges Henrici Primi" still are an important document for that obscure century which followed the Norman invasion. In this treatise we find no allusion to juries; the trial was either before the court of the hundred or that of the territorial judge, assisted by his free vassals. But we do find the great original principle, trial by peers, and, as it is called, per pais; that is,

[18] It may be here observed that, in all probability, the title "Leges Henrici Primi" has been continued to the whole book from the first two chapters, which do really contain laws of Henry I, namely, his general charter, and that to the city of London. A similar inadvertence has caused the well-known book, commonly ascribed to Thomas à Kempis, to be called "De Imitatione Christi," which is merely the title of the first chapter.

in the presence of the country, opposed to a distant and unknown jurisdiction—a principle truly derived from Saxon, though consonant also to Norman law, dear to both nations, and guaranteed to both, as it was claimed by both, in the twenty-ninth section of Magna Charta. "Unusquisque per pares suos judicandus est, et ejusdem provinciæ; peregrina autem judicia modis omnibus submovemus." ("Leges Henrici Primi," c. 31.) It may be mentioned, by the way, that these last words are taken from a capitulary of Ludovicus Pius, and that the compiler has been so careless as to leave the verb in the first person. Such an inaccuracy might mislead a reader into the supposition that he had before him a real law of Henry I.

It is obvious that, as the court had no function but to see that the formalities of the combat, the ordeal, or the compurgation were duly regarded, and to observe whether the party succeeded or succumbed, no oath from them, nor any reduction of their numbers, could be required. But the law of Normandy had already established the inquest by sworn recognitors, twelve or twenty-four in number, who were supposed to be well acquainted with the facts; and this in civil as well as criminal proceedings. We have seen an instance of it, not long before the conquest, among ourselves, in the history of the monk of Ramsey. It was in the development of this amelioration in civil justice that we find instances during this period (Sir F. Palgrave has mentioned several) where a small number have been chosen from the county court and sworn to declare the truth, when the judge might suspect the partiality or ignorance of the entire body. Thus in suits for the recovery of property the public mind was gradually accustomed to see the jurisdiction of the freeholders in their court transferred to a more select number of sworn and well-informed men. But this was not yet a matter of right, nor even probably of very common usage. It was in this state of things that Henry II brought in the assize of novel disseizin.

This gave an alternative to the tenant on a suit for the recovery of land, if he chose not to risk the combat, of putting himself on the assize; that is, of being tried by four knights summoned by the sheriff and twelve more selected by them, forming the sixteen sworn recognitors, as they were called, by whose verdict the cause was determined. "Est autem magna assisa," says Glanvil (lib. ii, c. 7), "regale quoddam beneficium, clementia principis de consilio procerum populis indultum, quo vitæ hominum et statûs integritati tam salubriter consulitur, ut in jure quod quis in libero soli tenemento possidet retinendo duelli casum declinare possint homines ambiguum. Ac per hoc contingit insperatæ et prematuræ mortis ultimum evadere supplici-

um, vel saltem perennis infamiæ opprobrium, illius infesti et inverecundi verbi quod in ore victi turpiter sonat consecutivum.[16] Ex æquitate autem maximâ prodita est legalis ista institutio. Jus enim quod post multas et longas dilationes vix evincitur per duellum, per beneficium istius constitutionis commodius et acceleratius expeditur." The whole proceedings on an assize of novel disseizin, which was always held in the king's court or that of the justices itinerant, and not before the county or hundred, whose jurisdiction began in consequence rapidly to decline, are explained at some length by this ancient author, the chief justiciary of Henry II.

Changes not less important were effected in criminal processes during the second part of the Norman period, which we consider as terminating with the accession of Edward I. Henry II abolished the ancient privilege of compurgation by the oaths of friends, the manifest fountain of unblushing perjury; though it long afterward was preserved in London and in boroughs by some exemption which does not appear. This, however, left the favourite, or at least the ancient and English, mode of defence by chewing consecrated bread, handling hot iron, and other tricks called ordeals. But near the beginning of Henry III's reign the Church, grown wiser and more fond of her system of laws, abolished all kinds of ordeal in the fourth Lateran Council. The combat remained; but it was not applicable unless an injured prosecutor or appellant came forward to demand it. In cases where a party was only charged on vehement suspicion of a crime, it was necessary to find a substitute for the forbidden superstition. He might be compelled, by a statute of Henry II, to abjure the realm. A writ of 3 Henry III directs that those against whom the suspicions were very strong should be kept in safe custody. But this was absolutely incompatible with English liberty and with Magna Charta. "No further enactment," says Sir F. Palgrave, "was made; and the usages which already prevailed led to a general adoption of the proceeding which had hitherto existed as a privilege or as a favour—that is to say, of proving or disproving the testimony of the first set of inquest men by the testimony of a second array—and the individual accused by the appeal, or presented by the general opinion of the hundred, was allowed to defend himself by the particular testimony of the hundred to which he belonged. For this purpose another inquest was impanelled, sometimes composed of twelve persons named from the 'visne' and three from each of the adjoining townships; and sometimes the very same jurymen who had presented the offence might, if the culprit thought fit,

[16] This was the word craven, or begging for life, which was thought the utmost disgrace.

be examined a second time, as the witnesses or inquest of the points in issue. But it seems worthy of remark that 'trial by inquest' in criminal cases never seems to have been introduced except into those courts which acted by the king's writ or commission. The presentment or declaration of those officers which fell within the cognizance of the hundred jury or the leet jury, the representatives of the ancient échevins, was final and conclusive; no traverse, or trial by a second jury, in the nature of a petty jury, being allowed" (p. 269).

Thus trial by a petty jury upon criminal charges came in; it is of the reign of Henry III, and not earlier. And it is to be remarked, as a confirmation of this view, that no one was compellable to plead—that is, the inquest was to be of his own choice. But if he declined to endure it he was remanded to prison, and treated with a severity which the statute of Westminster I, in the third year of Edward I, calls peine forte et dure; extended afterward, by a cruel interpretation, to that atrocious punishment on those who refused to stand a trial, commonly in order to preserve their lands from forfeiture, which was not taken away by law till the last century.

Thus was trial by jury established, both in real actions or suits affecting property in land and in criminal procedure, the former preceding by a little the latter. But a new question arises as to the province of these early juries; and the view lately taken is very different from that which has been commonly received.

The writer whom we have so often had occasion to quote has presented trial by jury in what may be called an altogether new light; for though Reeves, in his "History of the English Law," almost translating Glanvil and Bracton, could not help leading an attentive reader to something like the same result, I am not aware that anything approaching to the generality and fulness of Sir Francis Palgrave's statements can be found in any earlier work than his own.

"Trial by jury, according to the old English law, was a proceeding essentially different from the modern tribunal, still bearing the same name, by which it has been replaced; and whatever merits belonged to the original mode of judicial investigation—and they were great and unquestionable, though accompanied by many imperfections—such benefits are not to be exactly identified with the advantages now resulting from the great bulwark of English liberty. Jurymen in the present day are triers of the issue: they are individuals who found their opinion upon the evidence, whether oral or written, adduced before them; and the verdict delivered by them is their declaration of the judgment which they have formed. But the ancient jurymen were not impanelled to examine into the credibility of the evidence: the ques-

tion was not discussed and argued before them: they, the jurymen, were the witnesses themselves, and the verdict was substantially the examination of these witnesses, who of their own knowledge, and without the aid of other testimony, afforded their evidence respecting the facts in question to the best of their belief. In its primitive form a trial by jury was therefore only a trial by witnesses; and jurymen were distinguished from any other witnesses only by customs which imposed upon them the obligation of an oath and regulated their number, and which prescribed their rank and defined the territorial qualifications from whence they obtained their degree and influence in society.

"I find it necessary to introduce this description of the ancient 'trial by jury,' because, unless the real functions of the original jurymen be distinctly presented to the reader, his familiar knowledge of the existing course of jurisprudence will lead to the most erroneous conclusions. Many of those who have descanted upon the excellence of our venerated national franchise seem to have supposed that it has descended to us unchanged from the days of Alfred; and the patriot who claims the jury as the 'judgment by his peers' secured by Magna Charta can never have suspected how distinctly the trial is resolved into a mere examination of witnesses." (Palgrave, i, 243.)

This theory is sustained by a great display of erudition, which fully establishes that the jurors had such a knowledge, however acquired, of the facts as enabled them to render a verdict without hearing any other testimony in open court than that of the parties themselves, fortified, if it might be, by written documents adduced. Hence the knights of the grand assize are called recognitors, a name often given to others sworn on an inquest. In the Grand Coustumier of Normandy, from which our writ of right was derived, it is said that those are to be sworn "who were born in the neighbourhood, and who have long dwelt there; and such ought they to be, that it may be believed they know the truth of the case, and that they will speak the truth when they shall be asked." This was the rule in our own grand assize. The knights who appeared in it ought to be acquainted with the truth, and if any were not so they were to be rejected and others chosen, until twelve were unanimous witnesses. Glanvil (lib. ii) furnishes sufficient proof, if we may depend on the language of the writs which he there inserts. It is to be remembered that the transactions upon which an assize of modern disseizin or writ of right would turn might frequently have been notorious. In the eloquent language of Sir F. Palgrave, "the forms, the festivities, and the ceremonies accompanying the hours of joy and the days of sorrow which form the distinguishing epochs in the brief chronicle of domestic life impressed them upon the memory

of the people at large. The parchment might be recommended by custom, but it was not required by law; and they had no registers to consult, no books to open. By the declaration of the husband at the church door, the wife was endowed in the presence of the assembled relations, and before all the merry attendants of the bridal train. The birth of the heir was recollected by the retainers who had participated in the cheer of the baronial hall; and the death of the ancestor was proved by the friends who had heard the wailings of the widow, or who had followed the corpse to the grave. Hence trial by jury was an appeal to the knowledge of the country; and the sheriff, in naming his panel, performed his duty by summoning those individuals from among the inhabitants of the country who were best acquainted with the points at issue. If from peculiar circumstances the witnesses of a fact were previously marked out and known, then they were particularly required to testify. Thus, when a charter was pleaded, the witnesses named in the attesting clause of the instrument and who had been present in the folkmoot, the shire, or the manor court when the seal was affixed by the donor, were included in the panel; and when a grant had been made by parole the witnesses were sought out by the sheriff and returned upon the jury." (Palgrave, p. 248.)

Several instances of recognition—that is, of jurors finding facts on their own knowledge—occur in the very curious chronicle of Jocelyn de Brakelonde, published by the Camden Society, long after the "Rise and Progress of the Commonwealth." One is on a question whether certain land was liberum feudum ecclesiæ an non. "Cumque inde summonita fuit recognitio 12 militum in curia regis facienda, facta est in curia abbatis apud Herlavum per licentiam Ranulfi de Glanvilla, et juraverunt recognitores se nunquam scivisse illam terram fuisse separatam ab ecclesiâ" (p. 45). Another is still more illustrative of the personal knowledge of the jury overruling written evidence. A recognition was taken as to the right of the abbey over three manors. "Carta nostra lecta in publico nullam vim habuit, quia tota curia erat contra nos. Juramento facto, dixerunt milites se nescire de cartis nostris, nec de privatis conventionibus; sed se credere dixerunt, quod Adam et pater ejus et avus a centum annis retro tenuerunt maneria in feudum firmum, unusquisque post alium, diebus quibus fuerunt vivi et mortui, et sic disseisiati sumus per judicum terræ" (p. 91).

This "judgment of the land" is, upon Jocelyn's testimony, rather suspicious, since they seem to have set common fame against a written deed. But we see by it that, although parol testimony might not be generally admissible, the parties had a right to produce documentary evidence in support of their title.

It appears at first to be an obvious difficulty in the way of this general resolution of jurors into witnesses, or of witnesses into jurors, that many issues, both civil and criminal, required the production of rather more recondite evidence than common notoriety. The known events of family history, which a whole neighbourhood could attest, seem not very likely to have created litigation. But even in those ages of simplicity facts might be alleged, the very groundwork of a claim to succession, as to which no assize of knights could speak from personal knowledge. This, it is said, was obviated by swearing the witnesses upon the panel, so that those who had a real knowledge of the facts in question might instruct their fellow-jurors. Such, doubtless, was the usual course; but difficulties would often stand in the way. Glanvil meets the question, What is to be done if no knights are acquainted with the matter in dispute? by determining that persons of lower degree may be sworn. But what if women or villeins were the witnesses? What, again, if the course of inquiry should render fresh testimony needful? It must appear, according to all our notions of judicial evidence, that these difficulties must not only have led to the distinction of jurors from witnesses, but that no great length of time could have elapsed before the necessity of making it was perceived. Yet our notions of judicial evidence are not very applicable to the thirteenth century. The records preserved give us reason to believe that common fame had great influence upon these early inquests. In criminal inquiries especially the previous fame of the accused seems to have generally determined the verdict. He was not allowed to sustain his innocence by witnesses—a barbarous absurdity, as it seems, which was gradually removed by indulgence alone; but his witnesses were not sworn till the reign of Mary. If, however, the prosecutor or appellant, as he was formerly styled, was under an equal disability, the inequality will vanish, though the absurdity will remain. The prisoner had originally no defence, unless he could succeed in showing the weakness of the appellant's testimony, but by submitting to the ordeal or combat, or by the compurgation of his neighbours. The jurors, when they acquitted him, stood exactly in the light of these; it was a more refined and impartial compurgation, resting on their confidence in his former behaviour. Thus let us take a record quoted by Palgrave, vol. ii, p. 184: "Robertus filius Roberti de Ferrariis appellat Ranulfum de Fatteswarthe quod ipse venit in gardinum suum, in pace domini Regis, et nequiter assultavit Rogerum hominem suum, et eum verberavit et vulneravit, ita quod de vitâ ejus desperabatur; et ei robavit unum pallium et gladium et arcum et sagittas; et idem Rogerus offert hoc probare per corpus suum, prout curia consideraverit;

et Ranulphus venit et defendit totum de verbo in verbum, et offert domino Regi unam marcam argenti pro habenda inquisitione per legales milites, utrum culpabilis sit inde, necne; et præterea dicit quod iste Rogerus nunquam ante appellavit eum, et petit ut hoc ei allocetur—oblatio recipitur.—Juratores dicunt quod revera contencio fuit inter gardinarium prædicti Roberti, Osmund nomine, et quosdam garciones, sed Ranulfus non fuit ibi, nec malecredunt eum, de aliqua roberia, vel de aliquo malo, facto eidem."

We have here a trial by jury in its very beginning, for the payment of one mark by the accused in order to have an inquest instead of the combat shows that it was not become a matter of right. We may observe that, though Robert was the prosecutor, his servant Roger, being the aggrieved party, and capable of becoming a witness, was put forward as the appellant, ready to prove the case by combat. The verdict seems to imply that the jury had no bad opinion of Ranulf, the appellee.

The fourteenth book of Glanvil contains a brief account of the forms of criminal process in his age; and here it appears that a woman could only be a witness, or rather an appellant, where her husband had been murdered or her person assaulted. The words are worth considering: " Duo sunt genera homicidiorum; unum est, quod dicitur murdrum, quod nullo vidente, nullo sciente, clam perpetratur, præter solum interfectorem et ejus complices; ita quod mox non assequatur clamor popularis juxta assisam super hoc proditam. In hujusmodi autem accusatione non admittitur aliquis, nisi fuerit de consanguinitate ipsius defuncti. Est et aliud homicidium quod constat in generali vocabulo, et dicitur simplex homicidium. In hoc etiam placito non admittitur aliquis accusator ad probationem, nisi fuerit mortuo consanguinitate conjunctus, vel homagio vel dominio, ita ut de morte loquatur, ut sub visus sui testimonio. Præterea sciendum quod in hoc placito mulier auditur accusans aliquem de morte viri sui, si de visu loquatur (l. xiv, c. 3). Tenetur autem mulier quæ proponit se à viro oppressam in pace domini regis, mox dum recens fuerit maleficium vicinam villam adire, et ibi injuriam sibi illatam probis hominibus ostendere, et sanguinem, si quis fuerit effusus, et vestium scissiones; dehinc autem apud præpositum hundredi idem facit. Postea quoque in pleno comitatu id publice proponat. Auditur itaque mulier in tali casu aliquem accusans, sicut et de aliâ quâlibet injuriâ corpori suo illatam solet audiri " (c. 6).

Thus it appears that on charges of secret murder the kindred of the deceased, but no others, might be heard in court as witnesses to common suspicion, since they could be no more. I add the epithet secret; but it was at that time implied in the

word murdrum. But in every case of open homicide the appellant, be it the wife or one of his kindred, his lord or vassal, must have been actually present. Other witnesses probably, if such there were, would be placed on the panel. The woman was only a prosecutrix; and, in the other sex, there is no doubt that the prosecutor's testimony was heard.

In claims of debt it was in the power of the defendant to wage his law—that is, to deny on oath the justice of the demand. This he was to sustain by the oaths of twelve compurgators, who declared their belief that he swore the truth; and if he declined to do this, it seems that he had no defence. But in the writ of right, or other process affecting real estate, the wager of law was never allowed; and even in actions of debt the defendant was not put to this issue until witnesses for the plaintiff had been produced, "sine testibus fidelibus ad hoc inductis." This, however, was not in presence of a jury, but of the bailiff or judge (Magna Charta, c. 28), and therefore does not immediately bear on the present subject.

In litigation before the king's justices, in the curia regis, it must have been always necessary to produce witnesses; though, if their testimony were disputed, it was necessary to recur to a jury in the county, unless the cause were of a nature to be determined by duel. A passage in Glanvil will illustrate this. A claim of villenage, when liberty was pleaded, could not be heard in the county court, but before the king's justices in his court. "Utroque autem præsente in curiâ hoc modo dirationabitur libertas in curiâ, siquidem producit is qui libertatem petit, plures de proximis et consanguineis de eodem stipite unde ipse exierit exeuntes, per quorum libertates, si fuerint in curiâ recognitæ et probatæ, liberabitur à jugo servitutis is qui ad libertatem proclamatur. Si vero contra dicatur status libertatis eorundem productorum vel de eodem dubitatur, ad vicinetum erit recurrendum; ita quod per ejus veredictum sciatur utrum illi liberi homines an non, et secundum dictum vicineti judicabitur" (l. ii, c. 4). The plea of villenage was never tried by combat.

It is the opinion of Lord Coke that a single accuser was not sufficient at common law to convict any one of high treason; in default of a second witness "it shall be tried before the constable or marshal by combat, as by many records appeareth." ("3 Inst.," 26.) But however this might be, it is evident that as soon as the trial of peers of the realm for treason or felony in the court of the high steward became established, the practice of swearing witnesses on the panel must have been relinquished in such cases. "That two witnesses be required appeareth by our books, and I remember no authority in our books to the contrary. And this seemth to be the more clear in the trial by

the peers or nobles of the realm because they come not de aliquo vicineto, whereby they might take notice of the fact in respect of vicinity, as other jurors may do." (Ibid.) But the court of the high steward seems to be no older than the reign of Henry IV, at which time the examination of witnesses before common juries was nearly, or completely, established in its modern form; and the only earlier case we have, if I remember right, of the conviction of a peer in Parliament—that of Mortimer in the fourth of Edward III—was expressly grounded on the notoriousness of the facts. ("Rot. Parl.," ii, 53.) It does not appear, therefore, indisputable by precedent that any witnesses were heard, save the appellant, on trial of peers of the realm in the twelfth or thirteenth century, though it is by no means improbable that such would have been the practice.

Notwithstanding such exceptions, however, sufficient proofs remain that the jury themselves, especially in civil cases, long retained their character of witnesses to the fact. If the recognitors, whose name bespeaks their office, were not all so well acquainted with the matters in controversy as to believe themselves competent to render a verdict, it was the practice to afforce the jury, as it was called, by rejecting these and filling their places with more sufficient witnesses, until twelve were found who agreed in the same verdict.[17] (Glanvil, l. ii, c. 17.) Not that unanimity was demanded, for this did not become the rule till about the reign of Edward III; but twelve, as now on a grand jury, must concur.[18] And though this profusion of witnesses seems strange to us, yet what they attested (in the age at least of Glanvil and for some time afterward) was not, as at present, the report of their senses to the fact in issue, but all which they had heard and believed to be true; above all, their judgment as to the respective credibility of the demandant and tenant, heard in that age personally, or the appellant and appellee in a prosecution.

Bracton speaks of afforcing a panel by the addition of better-informed jurors to the rest, as fit for the court to order, "de consilio curiæ affortietur assisa ita quod apponantur alii juxta numerum majoris partis quæ dissenserit, vel saltem quatuor vel sex, et adjungantur aliis." The method of rejection used in Glanvil's time seems to have been altered. But in the time of Britton, soon afterward, this afforcement it appears could only be made with the consent of the parties; though if, as his language seems

[17] By the jury, the reader will remember that, in Glanvil's time, is meant the recognitors, on an assize of novel disseizin, or mort d'ancestor. For these real actions, now abolished, he may consult a good chapter on them in Blackstone, unless he prefer Bracton and the year-books, digested into Reeves's "History of the Law."

[18] In 20 Edward III, Chief-Justice Thorpe is said to have been reproved for taking a verdict from eleven jurors. ("Law Review," No. iv, p. 383.)

to imply, the verdict was to go against the party refusing to have the jury afforced, no one would be likely to do so. Perhaps he means that this refusal would create a prejudice in the minds of the jury almost certain to produce such a verdict.

"It may be doubtful," says Mr. Starkie, "whether the doctrine of afforcement was applied to criminal cases. The account given by Bracton as to the trial by the country on a criminal charge is very obscure. It was to be by twelve jurors, consisting of milites or liberi et legales homines of the hundred and four villatæ." [19] But it is conjectured that the text is somewhat corrupt, and that four inhabitants of the vill were to be added to the twelve jurors. In some criminal cases it appears from Bracton that trial by combat could not be dispensed with, because the nature of the charge did not admit of positive witnesses. "Oportet quod defendat se per corpus suum quia patria nihil scire potest de facto, nisi per præsumtionem et per auditum, vel per mandatum [?] quod quidem non sufficit ad probationem pro appellando nec pro appellato ad liberationem." This indicates, on the one hand, an advance in the appreciation of evidence since the twelfth century; common fame and mere hearsay were not held sufficient to support a charge. But, on the other hand, instead of presuming the innocence of a party against whom no positive testimony could be alleged, he was preposterously called upon to prove it by combat, if the appellant was convinced enough of his guilt to demand that precarious decision. It appears clear from some passages in Bracton that in criminal cases other witnesses might occasionally be heard than the parties themselves. Thus, if a man were charged with stealing a horse, he says that either the prosecutor or the accused might show that it was his own, bred in his stable, known by certain marks, which could hardly be but by calling witnesses. It is not improbable that witnesses were heard distinct from the jury in criminal cases before the separation had been adopted in real actions.

At a later time witnesses are directed to be joined to the inquest, but no longer as parts of it. "We find in the twenty-third of Edward III" (I quote at present the words of Mr. Spence, "Equitable Jurisdiction," p. 129) "the witnesses, instead of being summoned as constituent members, were adjoined to the recognitors or jury in assizes to afford to the jury the benefit of their testimony, but without having any voice in the verdict. This is the first indication we have of the jury deciding on evidence formally produced, and it is the connecting link between the

[19] The history of trial by jury has been very ably elucidated by Mr. Starkie, in the fourth number of the "Law Review," which, though anonymous, I venture to quote by his name. I have been assisted in the text by this paper.

ancient and modern jury." [20] But it will be remembered—what Mr. Spence certainly did not mean to doubt—that the evidence of the demandant in an assize or writ of right, and of the prosecutor or appellant in a criminal case, had always been given in open court; and the tenant or appellee had the same right, but the latter probably was not sworn. Nor is it clear that the court would refuse other testimony if it were offered during the course of a trial. The sentence just quoted, however, appears to be substantially true, except that the words "formally produced" imply something more like the modern practice than the facts mentioned warrant. The evidence in the case reported in 23 Ass. 11 was produced to none but the jury.

Mr. Starkie has justly observed that "the transition was now almost imperceptible to the complete separation of the witnesses from the inquest. And this step was taken at some time before the eleventh of Henry IV [21]—namely, that all the witnesses were to give their testimony at the bar of the court, so that the judges might exclude those incompetent by law, and direct the jury as to the weight due to the rest." "This effected a change in the modes of trying civil cases, the importance of which can hardly be too highly estimated. Jurors, from being, as it were, mere recipients and depositaries of knowledge, exercised the more intellectual faculty of forming conclusions from testimony—a duty not only of high importance with a view to truth and justice, but also collaterally in encouraging habits of reflection and reasoning (aided by the instructions of the judges), which must have had a great and most beneficial effect in promoting civilization. The exercise of the control last adverted to on the part of the judges was the foundation of that system of rules in regard to evidence which has since constituted so large and important a branch of the law of England." (Spence, p. 129.)

The obscurity that hangs over the origin of our modern course of procedure before juries is far from being wholly removed. We are reduced to conjectural inferences from brief passages in early law-books, written for contemporaries, but which leave a considerable uncertainty, as the readers of this note will be too apt to discover. If we say that our actual trial

[20] The reference is to the "Year-Book," 23 Ass., 11. It was adjudged that the witnesses could not be challenged like jurors: "car ils doivent rien temoigner fors ceo qu'ils verront et oiront. Et l'assise fut pris, et les temoins ajoints a eux." This has no appearance of the introduction of a new custom. Above fifty years had elapsed since Bracton wrote, so that the change might have easily crept in.

[21] The "Year-Book" of 11 Henry IV, to which a reference seems here to be made, has not been consulted by me. But in the next year (12 Henry IV, 7) witnesses are directed to be joined to the inquest (as in 23 Ass., 11); and one of the judges is reported to have said this had often been done; yet we might infer that the practice was not so general as to pass without comment. This looks as if the separation of the witnesses, by their examination in open court, were not quite of so early a date as Mr. Starkie and Mr. Spence suppose. But, perhaps, both modes of procedure might be concurrent for a certain time.

by jury was established not far from the beginning of the fif century, we shall perhaps approach as nearly as the dilige late inquirers has enabled us to proceed. But in the ti Fortescue, whose treatise "De Laudibus Legum Angliæ written soon after 1450, we have the clearest proof that the of procedure before juries by vivâ-voce evidence was the sa at present. It may be presumed that the function of the ad and of the judge to examine witnesses, and to comment on testimony, had begun at this time. The passage in Fort is so full and perspicuous that it deserves to be extracted:

"Twelve good and true men being sworn as in the m above related, legally qualified—that is, having, over and b their movable possessions, in land sufficient (as was said) w with to maintain their rank and station—neither suspecte nor at variance with either of the parties; all of the neighl hood; there shall be read to them in English by the cour record and nature of the plea at length which is dependin tween the parties; and the issue thereupon shall be plainly before them, concerning the truth of which those who a sworn are to certify the court: which done, each of the pa by themselves or their counsel, in presence of the court, declare and lay open to the jury all and singular the matter evidences whereby they think they may be able to inform court concerning the truth of the point in question; after v each of the parties has a liberty to produce before the cou such witnesses as they please, or can get to appear on thei half, who, being charged upon their oaths, shall give in evi all that they know touching the truth of the fact conce which the parties are at issue. And if necessity so require witnesses may be heard and examined apart, till they shall deposed all that they have to give in evidence, so that wha one has declared shall not inform or induce another witn the same side to give his evidence in the same words, or t very same effect. The whole of the evidence being gone thr the jurors shall confer together at their pleasure, as they think most convenient, upon the truth of the issue before with as much deliberation and leisure as they can well d being all the while in the keeping of an officer of the court place assigned them for that purpose, lest any one shoul tempt by indirect methods to influence them as to their op which they are to give in to the court. Lastly, they are to r into court and certify the justices upon the truth of the so joined in the presence of the parties (if they please to be ent), particularly the person who is plaintiff in the cause: the jurors shall so certify, in the laws of England, is calle verdict" (c. 26).

Mr. Amos, indeed, has observed, in his edition of Fortescue (p. 93): "The essential alteration which has since taken place in the character of the jury does not appear to have been thoroughly effected till the time of Edward VI and Mary. Jurors are often called testes." But though this appellation might be retained from the usage of older times, I do not see what was left to effect in the essential character of a jury when it had reached the stage of hearing the witnesses and counsel of the parties in open court.

The result of this investigation, suggested perhaps by Reeves, but followed up by Sir Francis Palgrave for the earlier, and by Mr. Starkie for the later period, is to sweep away from the ancient constitution of England what has always been accounted both the pledge of its freedom and the distinctive type of its organization, trial by jury, in the modern sense of the word, and according to modern functions. For though the passage just quoted from Fortescue is conclusive as to his times, these were but the times of the Lancastrian kings; and we have been wont to talk of Alfred, or at least of the Anglo-Saxon age, when the verdict of twelve sworn men was the theme of our praise. We have seen that, during this age, neither in civil nor in criminal proceedings, it is possible to trace this safeguard for judicial purity. Even when juries may be said to have existed in name, the institution denoted but a small share of political wisdom, or at least provided but indifferently for impartial justice. The mode of trial by witnesses returned on the panel, hearing no evidence beyond their own in open court, unassisted by the sifting acuteness of lawyers, laid open a broad inlet for credulity and prejudice, for injustice and corruption. Perjury was the dominant crime of the middle ages; encouraged by the preposterous rules of compurgation, and by the multiplicity of oaths in the ecclesiastical law. It was the frequency of this offence, and the impunity which the established procedure gave to that of jurors, that produced the remedy by writ of attaint; but one which was liable to the same danger; since the jury on an attaint must, in the early period of that process, have judged on common fame or on their own testimony, like those whose verdict they were called to revise; and where hearsay and tradition passed for evidence, it must, according to our stricter notions of penal law, have been very difficult to obtain an equitable conviction of the first panel on the ground of perjury.

The chronicle, already quoted, by Jocelyn de Brakelonde, affords an instance, among multitudes, probably, that are unrecorded, where a jury flagrantly violated their duty. Five recognitors in a writ of assize came to Samson, Abbot of St. Edmund's Bury, the chronicler's hero, the right of presentation to a church

being the question, in order to learn from him what t
swear, meaning to receive money. He promised the
but bade them swear according to their consciences.
away in wrath, and found a verdict against the abbey [22]

Yet in its rudest and most imperfect form the trial
inquest was far superior to the impious superstition
the hardly less preposterous and unequal duel, the un
ence to power in compurgation, when the oath of
counterbalanced those of six ceorls, and even to the fr
but tumultuary and unenlightened decisions of the h
the county. It may, indeed, be thought by the specu
losopher, or the practical lawyer, that in those early sta
we have just been surveying, from the introduction
jury under Henry II to the attainment of its actual
in the first part of the fifteenth century, there was litt
rant our admiration. Still let us ever remember that
of past ages by an erroneous standard when we wond
prejudices, much more when we forget our own. We
to place ourselves, for a few minutes, in imagination a
English of the twelfth and thirteenth centuries, and
better understand why they cherished and panted for th
parium, the trial by their peers, or, as it is emphatica
by the country. It stood in opposition to foreign la
foreign law; to the chicane and subtlety, the dilatory
pensive though accurate technicalities, of Normandy, to
where their good name could not stand them in stead
tradition of their neighbours support their claim. For
of these, for the maintenance of the laws of Edward
fessor, as in pious reverence they termed every Ang
usage, they were willing to encounter the noisy ruden
county court, and the sway of a potent adversary.

Henry II, a prince not perhaps himself wise, but
wise counsellors, blended the two schemes of jurispru
far as the times would permit, by the assize of novel

[22] I may set down here one or two other passages from the same chronicle, illustrating the modes of trial in that age. Samson offered that a right of advowson should be determined by the claimant's oath, a method recognised in some cases by the civil and canon law, but only, I conceive, in favour of the defendant. Cumque miles ille renuisset jurare, dilatum est juramentum per consensum utriusque partis sexdecim legalibus be hundredo, qui juraverunt hoc esse jus abbatis (p. 44). The proceeding by jurors was sometimes applied even when the sentence belonged to the ecclesiastical jurisdiction. A riot, with bloodshed, having occurred, the abbot, acceptis juramentis a sexdecim legalibus hominibus, et auditis eorum attestationibus, pronounced sentence of exc against the offenders.

The combat was not a mode of trial within boroug served the old Saxon c And this may be an additi the antiquity of their privil tenant of the celerarius of t potûs et escæ cura (Du C charged with robbery, and the combat, was hanged. T of Bury said that, if he had within the borough, it wo come to battle, but he would himself by the oaths of his sicut libertas est eorum qui burgum (p. 74). It is hard by which procedure the gr of guilty persons escaped.

and the circuits of his justices in eyre. From this age justly date our form of civil procedure; the trial by a jury (using always that word in a less strict sense than it bears with us) replaced that by the body of hundredors; the stream of justice purified itself in successive generations through the acuteness, learning, and integrity of that remarkable series of men whose memory lives chiefly among lawyers, I mean the judges under the house of Plantagenet; and thus, while the common law borrowed from Normandy too much, perhaps, of its subtlety in distinction, and became as scientific as that of Rome, it maintained, without encroachment, the grand principle of the Saxon polity, the trial of facts by the country. From this principle (except as to that preposterous relic of barbarism, the requirement of unanimity) may we never swerve—may we never be compelled, in wish, to swerve—by a contempt of their oaths in jurors, and a disregard of the just limits of their trust!

IX, page 526.—The nature of both tenures has been perspicuously illustrated by Mr. Allen, in his "Inquiry into the Rise and Growth of the Royal Prerogative," from which I shall make a long extract:

"The distribution of landed property in England by the Anglo-Saxons appears to have been regulated on the same principles that directed their brethren on the Continent. Part of the lands they acquired was converted into estates of inheritance for individuals; part remained the property of the public, and was left to the disposal of the state. The former was called bocland; the latter I apprehend to have been that description of landed property which was known by the name of folcland.

"Folcland, as the word imports, was the land of the folk or people. It was the property of the community. It might be occupied in common, or possessed in severalty; and, in the latter case, it was probably parcelled out to individuals in the folcgemot, or court of the district, and the grant attested by the freemen who were then present. But, while it continued to be folcland, it could not be alienated in perpetuity; and, therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority.[23]

"Bocland was held by book or charter. It was land that had been severed by an act of government from the folcland, and converted into an estate of perpetual inheritance. It might be-

[23] Spelman describes folcland as terra popularis, quæ jure communi possidetur —sine scripto. ("Gloss. Folcland.") In another place he distinguishes it accurately from bocland: Prædia Saxones duplici titulo possidebant: vel scripti auctoritate, quod bocland vocabant—vel populi testimonio, quod folcland dixere. Ib. Bocland.

long to the Church, to the king, or to a subject. It
alienable and devisable at the will of the proprietor.
be limited in its descent without any power of alienat
possessor. It was often granted for a single life, or
lives than one, with remainder in perpetuity to the C
was forfeited for various delinquencies to the state.

"Estates in perpetuity were usually created by ch
the introduction of writing, and, on that account, bc
land of inheritance are often used as synonymous e
But at an earlier period they were conferred by the
a staff, a spear, an arrow, a drinking-horn, the branch
or a piece of turf; and when the donation was in fav
Church, these symbolical representations of the gran
posited with solemnity on the altar; nor was this p
tirely laid aside after the introduction of title-deeds.
instances of it as late as the time of the Conqueror.
therefore, quite correct to say that all the lands of t
Saxons were either folcland or bocland. When land w
in perpetuity it ceased to be folcland; but it could not
priety be termed bocland unless it was conveyed by
instrument.

"Folcland was subject to many burdens and exac
which bocland was exempt. The possessors of folc
bound to assist in the reparation of royal vills and in ot
works. They were liable to have travellers and others
on them for subsistence. They were required to give
to kings and great men in their progresses through th
to furnish them with carriages and relays of horses, a
tend the same assistance to their messengers, followers,
ants, and even to the persons who had charge of th
horses, and hounds. Such at least are the burdens fr
lands are liberated when converted by charter into b

"Bocland was liable to none of these exactions.
leased from all services to the public, with the excepti
tributing to military expeditions, and to the reparation
and bridges. These duties or services were compris
phrase of trinoda necessitas, which were said to be inc
all persons, so that none could be excused from th
Church, indeed, contrived, in some cases, to obtain an
from them; but in general its lands, like those of ot
subject to them. Some of the charters granting to t
sions of the Church an exemption from all services v
were genuine, but the greater part are forgeries" (p. 1

Bocland, we perceive by this extract, was not
allodial, in the sense of absolute propriety. It might l
for lives, as was often the case; and then it seems to

called læn-land (præstita), lent or leased. (Palgrave, ii, 361.) Such land, however, was not feudal, as I conceive, if we use that word in its legitimate European sense; though lehn is the only German word for a fief. Mr. Allen has found no traces of this use of the word among the Anglo-Saxons. (Appendix, p. 57.) Sir F. Palgrave agrees in general with Mr. Allen.[24]

We find another great living authority on Anglo-Saxon and Teutonic law concurring in the same luminous solution of this long-disputed problem. "The natural origin of folcland is the superabundance of good land above what was at once appropriated by the tribes, families, or gentes (mægburg, gelondan), who first settled in a waste or conquered land; but its existence enters into and modifies the system of law, and on it depends the definition of the march and the gau with their boundaries. Over the folcland at first the king alone had no control; it must have been apportioned by the nation in its solemn meeting; earlier, by the shire or other collection of freemen. In "Beôwulf," the king determines to build a palace, and distribute in it to his comites such gold, silver, arms, and other valuables as God had given him, save the folcsceare and the lives of men—'bûtan folcsceare and feorum gumena'—which he had no authority to dispose of. This relative position of folcland to bocland is not confined to the Anglo-Saxon institutions. The Frisians, a race from whom we took more than has generally been recognised, had the same distinction. At the same time I differ from Grimm, who seems to consider folcland as the pure alod, bôcland as the fief. 'Folcland im Gegensatz zu beneficium. Leges Edv. II; das ist, reine alod, im Gegensatz zu beneficium, Lehen, Vgl. das Friesische câplond und bôcland. As., p. 15.' ('D. R. A.,' p. 463.) I think the reverse is the case; and, indeed, we have one instance where a king exchanged a certain portion of folcland for an equal portion of bôcland with one of his comites. He then gave the exchanged folcland all the privileges of bôcland, and proceeded to make the bôcland he had received in exchange folcland." (Kemble's "Codex Diplomaticus," i, p. 104.)

It is of importance to mention that Mr. Kemble, when he wrote this passage, had not seen Mr. Allen's work; so that the independent concurrence of two such antiquaries in the same theory lends it very great support. In the second volume of the "Codex Diplomaticus" the editor adduces fresh evidence as to the nature of folcland, "the terra fiscalis, or public land grantable by the king or his council, as the representatives of the

[24] The law of real property, or bocland, in the Anglo-Saxon period, is given in a few pages, equally succinct and luminous, by Mr. Spence. ("Equit. Jurisd.," pp. 20-25.) The "Codex Diplomaticus" furnishes the best ancient precedents, and is of course studied, to the disregard, where necessary, of more defective authorities, by those who regard this portion of legal history.

rights of the subjects of the realm, though the existing law left a large portion of the king's subjects liable to tallage imposed at the will of the crown; and the tenants of the mesne lords were in many cases exposed to similar exaction" (p. 42).

These passages appeared to Mr. Allen so inadequate a representation of the Anglo-Norman constitution, that he commented upon the ignorance of the committee with no slight severity in the "Edinburgh Review." The principal charges against the report in this respect are, that the committee have confounded the ordinary or select council of the king with the commune concilium, and supposed that the former alone was intended by historians, as the advisers of the crown in its prerogative of altering the law of the land, when, in fact, the great council of the national aristocracy is clearly pointed out; and that they have disregarded a great deal of historical testimony to the political importance of the latter. It appears to be clearly shown, from the "Saxon Chronicle" and other writers, that assemblies of bishops and nobles, sometimes very large, were held by custom, "de more," three times in the year, by William the Conqueror and by both his sons; that they were, however, gradually intermitted by Henry I, and ceased early in the reign of Stephen. In these councils, which were legislative so far as new statutes were ever required, a matter of somewhat rare occurrence, but more frequently rendering their advice on measures to be adopted, or their judgment in criminal charges against men of high rank, and even in civil litigation, we have, at least in theory, the acknowledged limitations of royal authority. I refer the reader to this article in the "Edinburgh Review" (vol. xxxv), to which we must generally assent; observing, however, that the committee, though in all probability mistaken in ascribing proceedings of the Norman sovereigns to the advice of a select council, which really emanated from one much larger, did not call in question, but positively assert, the constitutional necessity of the latter for general taxation, and perhaps for legislative enactments of an important kind. And, when we consider the improbability that "all the great men over all England, archbishops and bishops, abbots and earls, thanes and knights," as the Saxon chronicler pretends, could have been regularly present thrice a year, at Winchester, Westminster, and Gloucester, when William, as he informs us, "wore his crown," we may well suspect that, in the ordinary exercise of his prerogative, and even in such provisions as might appear to him necessary, he did not wait for a very full assembly of his tenants in chief. The main question is, whether this council of advice and assent was altogether of his own nomination, and this we may confidently deny.

The custom of the Anglo-Saxon kings had been to hold meet-

ings of their witan very frequently, at least in the regul
of their government. And this was also the rule in t
fiefs of France. The pomp of their court, the mainte
loyal respect, the power of keeping a vigilant eye ove
haviour of the chief men, were sufficient motives for the
kings to preserve this custom; and the nobility, of co
in it the security of their privileges as well as the exhi
their importance. Hence we find that William and his s
their courts de more, as a regular usage, three times
and generally at the great festivals, and in different par
kingdom. Instances are collected by the "Edinburgh
(vol. xxxv, p. 5). And here the public business was tra
though, if these meetings were so frequent, it is prob
for the most part they passed off in a banquet or a tou

The Lords' Committee, in notes on the second repo
reprinted in 1829, do not acquiesce in the positions
hardy critic, to whom, without direct mention, they m
allude. "From the relations of annalists and historian
observe, "it has been inferred that during the reign of t
queror, and during a long course of time from the c
the archbishops, bishops, abbots and priors, earls and b
the realm were regularly convened three times in every
three different and distinct places in the kingdom, to a
council of the realm. Considering the state of the coun
the habits and dispositions of the people, this seems hig
probable; especially if the word barones, or the words
or magnates, often used by writers in describing such
blies, were intended to include all the persons holding
ately of the crown, who, according to the charter of Joh
required to be summoned to constitute the great counci
realm, for the purpose of granting aids to the crown" (
But it is not necessary to suppose this; those might l
tended who lived near, or who were specially summone
committee argue on the supposition that all tenants in ch
have attended thrice a year, which no one probably ever a
But that William and his sons did hold public meetings, d
at three several places in every year, or at least very fre
can not be controverted without denying what respect
torical testimonies affirm; and the language of these early
intimates that they were numerously attended. Aids w
regularly granted, and laws much more rarely enacted in
but they might still be a national council. But the con
parts of such councils will be discussed in a subsequent n

It is to be here remarked that, with the exception of th
ters granted by William, Henry, and Stephen, which are
eral rather like confirmations of existing privileges tha

enactments, though some clauses appear to be of the latter kind, little authentic evidence can be found of any legislative proceedings from the conquest to the reign of Henry II. The laws of the Conqueror, which we find in Ingulfus, do not come within this category; they are a confirmation of English usages, granted by William to his subjects. "Cez sunt les leis et les custumes que li reis William grantad el pople de Engleterre après le conquest de la terre. Iceles mesmes que li reis Edward sun cusin tint devant lui." These, published by Gale ("Script. Rer. Anglic.," vol. i), and more accurately than before from the Holkham manuscript by Sir Francis Palgrave, have sometimes passed for genuine. The real original, however, is the Latin text, first published by him with the French. ("Eng. Commonw.," vol. ii, p. 89.) The French translation he refers to the early part of the reign of Henry III. At the time when Ingulfus is supposed to have lived, soon after the conquest, no laws, as Sir F. Palgrave justly observes, were written in French, and he might have added that we can not produce any other specimen of the language which is certainly of that age. (See "Quarterly Review," xxxiv, 260.) It is said in the charter of Henry I that the laws of Edward were renewed by William with the same emendation.

But the changes introduced by William in the tenure of land were so momentous that the most cautious inquirers have been induced to presume some degree of common consent by those whom they so much affected. "There seems to be evidence to show that the great change in the tenure of land, and particularly the very extensive introduction of tenure by knight-service, was made by the consent of those principally interested in the land charged with the burdens of that tenure; and that the general changes made in the Saxon laws by the Conqueror, forming of the two one people, was also effected by common consent; namely, in the language of the charter of William with respect to the tenures, 'per commune concilium tocius regni,' and with respect to both, as expressed in the charter of his son Henry, 'concilio baronum'; though it is far from clear who were the persons intended to be so described." ("Report of Lords' Committee," p. 50.)

The separation of the civil and ecclesiastical jurisdictions was another great innovation in the reign of the Conqueror. This the Lords' Committee incline to refer to his sole authority. But Allen has shown by a writ of William addressed to the Bishop of Lincoln that it was done "communi concilio, et concilio archiepiscoporum meorum, et cæterorum episcoporum et abbatum, et omnium principum regni mei." ("Edinb. Rev.," p. 15.) And the "Doomsday" survey was determined upon, after a consultation of William with his great council at Gloucester, in 1084.

such a charter was issued, and that the copy so preserved is probably correct, or nearly correct. The copy in the 'Red Book' is without date, and no circumstance tending to show its true date has occurred to the committee; but it may be collected from its contents that it was probably issued in the latter part of that king's reign; about which time it appears from history that he confirmed to his subjects in England the ancient Saxon laws, with alterations" (p. 28).

I once thought, and have said, that this charter seems to comprehend merely the feudal tenants of the crown. This may be true of one clause; but it is impossible to construe "omnes liberi homines totius monarchiæ" in so contracted a sense. The committee, indeed, observe that many of the king's tenants were long after subject to tallage. But I do not suppose these to have been included in "liberi homines." The charter involves a promise of the crown to abstain from exactions frequent in the Conqueror's reign, and falling on mesne tenants and others not liable to arbitrary taxation.

This charter contains a clause, "Hoc quoque præcipimus ut omnes habeant et teneant legem Edwardi Regis in omnibus rebus adjunctis his quæ constituimus ad utilitatem Anglorum." And as there is apparent reference to these words in the charter of Henry I, "Legem Edwardi Regis vobis reddo cum illis emendationibus quibus pater meus eam emendavit consilio baronum suorum," the committee are sufficiently moderate in calling this "a clause, tending to give in some degree authenticity to the copy of the charter of William the Conqueror inserted in the 'Red Book of the Exchequer'" (p. 39). This charter seems to be fully established: it deserves to be accounted the first remedial concession by the crown; for it indicates, especially taken in connection with public history, an arbitrary exercise of royal power which neither the new nor the old subjects of the English monarchy reckoned lawful. It is also the earliest recognition of the Anglo-Saxon laws, such as they subsisted under the Confessor, and a proof both that the English were now endeavouring to raise their heads from servitude, and that the Normans had discovered some immunities from taxation, or some securities from absolute power, among the conquered people, in which they desired to participate. It is deserving of remark that the distinction of personal law, which, indeed, had almost expired on the Continent, was never observed in England; at least, we have no evidence of it, and the contrary is almost demonstrable. The conquerors fell at once into the laws of the conquered, and this continued for more than a century.

The charter of William, like many others, was more ample than effectual. "The committee have found no document to

It is the favourite theory of M. Thierry, pushed to an extreme length both as to his own country and ours, that the conquering nation, Franks in one case, Normans in the other, remained down to a late period—a period, indeed, to which he assigns no conclusion—unmingled, or at least undistinguishable, constituting a double people of sovereigns and subjects, becoming a noble order in the state, haughty, oppressive, powerful, or, what is in one word most odious to a French ear in the nineteenth century, aristocratic.

It may be worthy of consideration, since the authority of this writer is not to be disregarded, whether the Norman blood were really blended with the native quite so soon as the reign of Henry II—that is, whether intermarriages in the superior classes of society had become so frequent as to efface the distinction. M. Thierry produces a few passages which seem to intimate its continuance. But these are too loosely worded to warrant much regard; and he admits that after the reign of Henry I we have no proof of any hostile spirit on the part of the English toward the new dynasty; and that some efforts were made to conciliate them by representing Henry II as the descendant of the Saxon line (vol. ii, p. 374). This, in fact, was true; and it was still more important that the name of English was studiously assumed by our kings (ignorant though they might be, in M. Thierry's phrase, what was the vernacular word for that dignity), and that the Anglo-Normans are seldom, if ever, mentioned by that separate designation. England was their dwelling place, English their name, the English law their inheritance; if this was not wholly the case before the separation of the mother-country under John, and yet we do not perceive much limitation necessary, it can admit of no question afterward.

It is, nevertheless, manifest that the descendants of William's tenants in capite, and of others who seized on so large a portion of our fair country from the Channel to the Tweed, formed the chief part of that aristocracy which secured the liberties of the Anglo-Saxon race, as well as their own, at Runnymede; and which, sometimes as peers of the realm, sometimes as well-born commoners, placed successive barriers against the exorbitances of power, and prepared the way for that expanded scheme of government which we call the English Constitution. The names in Dugdale's "Baronage" and in his "Summonitiones ad Parliamentum" speak for themselves; in all the earlier periods, and perhaps almost through the Plantagenet dynasty, we find a great preponderance of such as indicate a French source. New families sprung up by degrees, and are now sometimes among our chief nobility; but in general, if we find any at this day who have tolerable pretensions to deduce their lineage from the con-

quest, they are of Norman descent; the very few Sax
that may remain with an authentic pedigree in the m
seldom found in the wealthier class of gentry. This is
to be taken with deference to the genealogists. A
account I must confess that M. Thierry's opinion
continued distinction of races has more semblance of
this kingdom than can be pretended as to France, with
sacrifice of undeniable facts at the altar of plebeian
In the celebrated "Lettres sur l'Histoire de France,"
about 1820, there seems to be no other aim than
factious animosity against the ancient nobility of Fra
preposterous hypothesis that they are descended from
ers of Clovis; that Frank and Gaul have never been
mingled; and that a conquering race was, even in th
tempting to rivet its yoke on a people who disdaine
strange theory, or something like it, had been anno
very different spirit by Boulainvilliers in the last cen
of what family in France, unless possibly in the ea
can it be determined with confidence whether the fo
Frank or Gallo-Roman? Is it not a moral certainty
of the most ancient, especially in the south, must ha
the latter origin? It would be highly wrong to r
obsolete distinctions in order to keep up social ha
they founded in truth; but what shall we say if they
chimerical?

XIII, page 559.—It appears to have been the
Madox, and probably has been taken for granted by
antiquaries, that this court, denominated Aula or C
administered justice when called upon, as well as a
crown in public affairs, during the first four Norma
much as afterward. Allen, however, maintained ("Ed
xxvi, p. 364) that "the administration of justice in t
sort belonged originally to the great council. It was
baronial court, and his tenants in chief were the s
judges." Their unwillingness and inability to deal wi
questions of law, which, after the simpler rules of An
jurisprudence were superseded by the subtleties of
became continually more troublesome, led to the se
an inferior council from that of the legislature, to l
the name Curia Regis is for some time indifferently
historians. This was done by Henry II, as Allen c
at the great council of Clarendon, in 1164.

The Lords' Committee took another view, and o
be confessed, more consonant to the prevailing opini
ordinary council of the king, properly denominated b

'concilium' simply, seems always to have consisted of persons selected by him for that purpose; and these persons in later times, if not always, took an oath of office, and were assisted by the king's justiciaries or judges, who seem to have been considered as members of this council; and the chief justiciar, the treasurer and chancellor, and some other great officers of the crown, who might be styled the king's confidential ministers, seem also to have been always members of this select council; the chief justiciar, from the high rank attributed to his office, generally acting as president. This select council was not only the king's ordinary council of state, but formed the supreme court of justice, denominated Curia Regis, which commonly assembled three times in every year, wherever the king held his court, at the three great feasts of Easter, Whitsuntide, and Christmas, and sometimes also at Michaelmas. Its constant and important duty at those times was the administration of justice" (p. 20).

It has been seen in a former note that the meetings de more, three times in the year, are supposed by Mr. Allen to have been of the great council, composed of the baronial aristocracy. The positions, therefore, of the Lords' Committee were, of course, disputed in his celebrated review of their report. "So far is it," he says, "from being true that the term Curia Regis, in the time of the Conqueror and his immediate successors, meant the king's high court of justice, as distinguished from the legislature, that it is doubtful whether such a court then existed." ("Edinb. Rev.," xxxv, 6.) This is expressed with more hesitation than in the earlier article, and in a subsequent passage we read that "the high court of justice, to which the committee would restrict the appellation of Curia Regis, and of which such frequent mention is made under that name in our early records and courts of law, was confirmed and fully established by Henry II, if not originally instituted by that prince" (p. 8).

The argument of Mr. Allen rests very much on the judicial functions of the witenagemot, which he would consider as maintained in its substantial character by the great councils or Parliaments of the Norman dynasty. In this we may justly concur; but we have already seen how far he is from having a right to assume that the Anglo-Saxon kings, though they might administer justice in the full meetings called witenagemots, were restrained from its exercise before a smaller body more permanently attached to their residence. It is certain that there was an appeal to the king's court for denial of justice in that of the lord having territorial jurisdiction, and, as the words and the reason imply, from that of the sheriff. ("Leg. Hen. I," c. 58.) This was also the law before the conquest. But the plaintiff

incurred a fine if he brought his cause in the first instai
the king. (Thorpe's "Ancient Laws," p. 85; and see
Rev.," xxxv, 10.) It hardly appears evident that these c
probably and not generally interesting, might not be d
ostensibly, as they would on any hypothesis be in reali
chancellor, the high justiciar, and other great office
crown, during the intervals of the national council;
is confirmed by the analogy of the royal courts in Fran
were certainly not constituted on a very broad basis. T
court of a single barony might contain all the vassals
inconvenience would have become too great if the prir
been extended to all the tenants in chief of the realm.
lates to the first four reigns, for which we are reducec
grounds of probable and analogical reasoning, since
of the distinct existence of a judicial court seems to be p

In the reign of Henry II a court of justice is mani
tinguishable both from the select and from the greate
"In the Curia Regis were discussed and tried all pleas
ately concerning the king and the realm; and suitors
lowed, on payment of fines, to remove their plaints fro
jurisdictions of Anglo-Saxon creation into this court,
a variety of business was wrested from the ignorance
tiality of lower tribunals, to be more confidently submit
decision of judges of high reputation. Some plaints
removed into the Curia Regis by the express order of
others by the justices, then itinerant, who not unfreqt
themselves incompetent to decide upon difficult point
Matters of a fiscal nature, together with the business p
by the Chancery, were also transacted in the Curia Reg
a quantity of miscellaneous business was at length fot
so perplexing and impracticable, not only to the offic
Curia Regis, but also to the suitors themselves, that i
absolutely necessary to devise a remedy for the increa
A division of that court into distinct departments was
sequence; and thenceforth pleas touching the crown,
with common pleas of a civil and criminal nature, were
to the Curia Regis; plaints of a fiscal kind were tran
the Exchequer; and for the Court of Chancery were re
matters unappropriated to the other courts." (Hard
duction to "Close Rolls," p. 23.)

Mr. Hardy quotes a passage from Benedict Abba
temporary historian, which illustrates very remarkabl
velopment of our judicial polity. Henry II, in 1176
the justices in the Curia Regis from eighteen to five; an
that they should hear and determine all writs of the ki
not leaving the king's court, but remaining there for

pose; so that, if any question should arise which they could not settle, it should be referred to the king himself, and be decided as it might please him and the wisest men of the realm. And this reduction of the justices from eighteen to five is said to have been made per consilium sapientium regni sui; which may, perhaps, be understood of Parliament. But we have here a distinct mention of the Curia Regis, as a standing council of the king, neither to be confounded with the great council or Parliament, nor with the select body of judges, which was now created as an inferior, though most important tribunal. From this time, and probably from none earlier, we may date the commencement of the Court of King's Bench, which very soon acquired, at first indifferently with the council, and then exclusively, the appellation of Curia Regis.

The rolls of the Curia Regis, or Court of King's Bench, begin in the sixth year of Richard I. They are regularly extant from that time; but the usage of preserving a regular written record of judicial proceedings was certainly practised in England during the preceding reign. The roll of Michaelmas Term, in 9 John, contains a short transcript of certain pleadings in 7 Henry II, "proving that the mode of enrolment was then entirely settled." (Palgrave's introduction to "Rot. Cur. Regis," p. 2.) This authentic precedent (in 1161), though not itself extant, must lead us to carry back the judicial character of the Curia Regis, and that in a perfectly regular form, at least to an early part of the reign of Henry II; and this is more probable than the date conjectured by Allen, the assembly at Clarendon in 1164.[26] But, in fact, the interruption of the regular assemblies of the great council, thrice a year, which he admits to date from the reign of Stephen, would necessitate, even on his hypothesis, the institution of a separate court or council, lest justice should be denied or delayed. I do not mean that in the seventh year of Henry II there was a Court of King's Bench, distinct from the select council, which we have not any grounds for affirming, and the date of which I, on the authority of Benedict Abbas, have inclined to place several years lower, but that suits were brought before the king's judges by regular process, and recorded by regular enrolment.

These rolls of the Curia Regis, or the King's Court, held before his justices or justiciars, are the earliest consecutive judicial records in existence. The "Olim Registers" of the Parliament of Paris, next to our own in antiquity, begin in 1254.[27] (Pal-

[26] This discovery has led Sir F. Palgrave to correct his former opinion, that the rolls of Curia Regis under Richard I are probably the first that ever existed, Glanvil giving us no reason to presume any written records in his time. ("English Commonw.," vol. ii. p. 1.)

[27] They are published in the "Documens Inédits," 1839, by M. Beugnot.

grave's introduction, p. 1.) Every reader, he observ struck by the great quantity of business transacted justiciars. "And when we recollect the heavy expen even at this period, were attendant upon legal proce the difficulties of communication between the remote p kingdom and the central tribunal, it must appear evid many cases would not have been prosecuted in the ki had not some very decided advantage been derived source" (p. 6). The issues of fact, however, were rem tried by a jury of the vicinage; so that, possibly, th might not be quite so considerable as is here sugges the jurisdiction of the county and hundred courts was in real actions, or those affecting land, by the assize disseizin and mort d'ancestor, that there was no alter to sue before the courts at Westminster.

It would be travelling beyond the limits of my dwell longer on these legal antiquities. The reader w mind the threefold meaning of Curia Regis: the comm of the realm, already mentioned in a former note, and cussed again; the select council for judicial as well a trative purposes; and the Court of King's Bench, sepa the last in the reign of Henry II, and soon afterward exclusively, the denomination Curia Regis.

In treating the judges of the Court of Exchequer of the crown, rather than nobles, I have followed the u ion. But Allen contends that they were "barons sel the common council of the realm on account of the reputed qualifications for the office." They met in t and their court was called Curia Regis, with the ad scaccarium." Hence Fleta observes that, after the Co chequer was filled with mere lawyers, they were styl because formerly real barons had been the judges; "j ibidem commorantes barones esse dicimus, eo quod barones sedere solebant." ("Edinb. Rev.," xxxv, 11. certainly an important remark. But in practice it is sumed that the king selected such barons (a numerous should remember) as were likely to look well after of the crown. The Court of Exchequer is distinctly tra reign of Henry I.

XIV, page 566.—The theory of succession to the the Norman period intimated in the text has now b sively received. "It does not appear," says Mr. Ha any of the early English monarchs exercised any act of power, or disposed of public affairs, till after their el coronation. . . . These few examples appear to be

proofs that the fundamental laws and institutions of this kingdom, based on the Anglo-Saxon custom, were at that time against an hereditary succession unless by common consent of the realm." (Introduction to "Close Rolls," p. 35.) It will be seen that this abstinence from all exercise of power can not be asserted without limitation.

The early kings always date their reign from their coronation, and not from the decease of their predecessor, as is shown by Sir Harris Nicolas in his "Chronology of History" (p. 272). It had been with less elaborate research pointed out by Mr. Allen in his "Inquiry into the Royal Prerogative." The former has even shown that an exception which Mr. Allen had made in respect of Richard I, of whom he supposes public acts to exist, dated in the first year of his reign, but before his coronation, ought not to have been made; having no authority but a blunder made by the editors of Rymer's "Fœdera" in antedating by one month the decease of Henry II, and following up that mistake by the usual assumption that the successor's reign commenced immediately, in placing some instruments bearing date in the first year of Richard just twelve months too early. This discovery has been confirmed by Mr. W. Hardy in the twenty-seventh volume of the "Archæologia" (p. 109), by means of a charter in the archives of the duchy of Lancaster, where Richard, before his coronation, confirms the right of Gerald de Camville and his wife Nichola to the inheritance of the said Nichola in England and Normandy, with an additional grant of lands. In this he only calls himself "Ricardus Dei gratiâ dominus Angliæ." It has been observed, as another slighter circumstance, that he uses the form ego and meus instead of nos and noster.

Whatever, therefore, may have been the case in earlier reigns, all the kings, indeed, except Henry II, having come in by a doubtful title, we perceive that, as has been before said in the text on the authority of a historian, Richard I acted in some respects as king before the title was constitutionally his by his coronation. It is now known that John's reign began with his coronation, and that this is the date from which his charters, like those of his predecessors, are reckoned. But he seems to have acted as king before. (Palgrave's introduction to "Rot. Cur. Regis," vol. i, p. 91; and further proof is adduced in the introduction to the second volume.) Palgrave thinks the reign virtually began with the proclamation of the king's peace, which was at some short interval after the demise of the predecessor. He is positive, indeed, that the Anglo-Saxon kings had no right before their acceptance by the people at their coronation. But, "after the conquest," he proceeds, "it is probable, for we can

only speak doubtingly and hypothetically, that the heir
the royal authority, at least for the purposes of adm
the law, from the day that his peace was proclaimed.
obeyed as chief magistrate so soon as he was admitt
high office of protector of the public tranquility. Bu
not honoured as the king until the sacred oil had bee
upon him, and the crown set upon his head, and th
grasped in his hand." (Introduction to "Rot. Cu
p. 92.)

This hypothesis, extremely probable in all cases
opposition was contemplated, is not entirely that of Alle
and Nicolas; and it seems to imply an admitted righ
indeed, can not be disputed in the case of Henry II,
ceeded by virtue of a treaty asserted to by the baro
is it likely to have been in the least doubtful when I
and Henry III came to the throne. It is important,
for the unlearned reader to be informed that he has been
by the almanacs and even the historians, who lay it d
a king's reign has always begun from the death of h
cessor: and yet, that, although he bore not the royal
fore his coronation, the interval of a vacant throne was
but of a few days; the successor taking on himself th
istration without the royal title, by causing public pe
proclaimed.

The original principle of the necessity of consent to
succession was in some measure preserved, even at t
of Henry III in 1272, when fifty-six years of a single rei
have extinguished almost all personal recollections of p
"On the day of the king's burial the barons swore
Edward I, then absent from the realm, and from this
is dated." Four days having elapsed between the death
and the recognition of Edward as king, the accession of
was dated, not from his father's death, but from his ow
nition. Henry died on the 16th of November, and his
not acknowledged king till the 20th. (Allen's "Inquir
quoting Palgrave's "Parliamentary Writs.") Thus th
nition by the oath of fealty came in and was in the pla
coronation, though with the important difference that t
no reciprocity.

XV, page 568.—Mr. Allen has differed from me on
fulness of private war, quoting another passage fron
and one from Bracton ("Edinb. Rev.," xxx, 168); and
fied the passage after the first edition in consequen
remarks. But I adhere to the substance of what I h
It appears, indeed, that the king's peace was originally a

security, granted by charter under his hand and seal, which could not be violated without incurring a penalty. Proofs of this are found in "Doomsday," and it was a Saxon usage derived from the old Teutonic mundeburde. William I, if we are to believe what is written, maintained the peace throughout the realm. But the general proclamation of the king's peace at his accession, which became the regular law, may have been introduced by Henry II. Palgrave, to whom I am indebted, states this clearly enough: "Peace is stated in 'Doomsday' to have been given by the king's seal—that is, by a writ under seal. This practice, which is not noticed in the Anglo-Saxon laws, continued in the protections granted at a much later period, though after the general law of the king's peace was established such a charter had ceased to afford any special privilege. All the immunities arising from residence within the verge or ambit of the king's presence—from the truces, as they are termed in the continental laws, which recurred at the stated times and seasons —and also from the 'handselled' protection of the king, were then absorbed in the general declaration of the peace upon the accession of the new monarch. This custom was probably introduced by Henry II. It is inconsistent with the laws of Henry I; which, whether an authorized collection or not, exhibit the jurisprudence of that period, but it is wholly accordant with the subsequent tenor of the proceedings of the Curia Regis." ("English Commonwealth," vol. ii, p. 105.)

A few words in Glanvil (those in Bracton are more ambiguous), which may have been written before the king's peace was become a matter of permanent law, or may rather refer to Normandy than England, ought not, in my opinion, to be set against so clear a declaration. The right of private war in the time of Henry II was giving way in France; and we should always remember that the Anglo-Norman government was one of high prerogative. The paucity of historical evidence or that for records for private war, as a usual practice, is certainly not to be overlooked.

THE ENGLISH CONSTITUTION

I, page 573.—It is rather a curious speculative question, and such only, we may presume, it will long continue, whether bishops are entitled, on charges of treason or felony, to a trial by the peers. If this question be considered either theoretically or according to ancient authority, I think the affirmative proposition is beyond dispute. Bishops were at all times members of the great national council, and fully equal to lay lords in temporal power as well as dignity. Since the conquest they have

held their temporalities of the crown by a baronial tenu
if there be any consistency in law, must unequivocally d
them from commoners—since any one holding by barc
be challenged on a jury, as not being the peer of the pa
he was to try. It is true that they take no share in th
power of the House of Lords in cases of treason or fe
this is merely in conformity to those ecclesiastic:
which prohibited the clergy from partaking in cap
ment, and they have always withdrawn from the Hous
occasions under a protestation of their right to rem:
it not been for this particularity, arising wholly ou
own discipline, the question of their peerage could n
come into dispute. As for the common argument
are not tried as peers because they have no inherita
ity, I consider it as very frivolous, since it takes fo
the precise matter in controversy, that an inheritabl
is necessary to the definition of peerage or to its
privileges.

If we come to constitutional precedents, by which, v
ficiently numerous and unexceptionable, all questions of
are ultimately to be determined, the weight of ancient
seems to be in favour of the prelates. In the fifteenth
Edward III (1340), the king brought several charge
Archbishop Stratford. He came to Parliament with a
intention of defending himself before his peers. The
sisted upon his answering in the Court of Exchequer
ford, however, persevered, and the House of Lords, by t
consent, appointed twelve of their number—bishops, e
barons—to report whether peers ought to answer
charges in Parliament, and not elsewhere. This comm
ported to the king in full Parliament that the peers of
ought not to be arraigned, nor put on trial, except in
ment and by their peers. The archbishop upon this pr
king that, inasmuch as he had been notoriously defa
might be arraigned in full Parliament before the peers, a
make answer; which request the king granted. ("Rot
vol. ii, p. 127; Collier's "Eccles. Hist.," vol. i, p. 54.
proceedings against Stratford went no further; but I
impossible not to admit that his right to trial as a peer v
recognised both by the king and lords.

This is, however, the latest, and perhaps the only
of a prelate's obtaining so high a privilege. In the p
reign of Edward II, if we can rely on the account of T
ham (p. 119), Adam Orleton, the factious Bishop of H
had first been arraigned before the House of Lords, an
quently convicted by a common jury; but the transac

of a singular nature, and the king might probably be influenced by the difficulty of obtaining a conviction from the temporal peers, of whom many were disaffected to him, in a case where privilege of clergy was vehemently claimed. But about 1357 a Bishop of Ely, being accused of harbouring one guilty of murder, though he demanded a trial by the peers, was compelled to abide the verdict of a jury. (Collier, p. 557.) In the thirty-first of Edward III (1358) the Abbot of Missenden was hanged for coining. (2 Inst., p. 635.) The abbot of this monastery appears from Dugdale to have been summoned by writ in the forty-ninth of Henry III. If he actually held by barony, I do not perceive any strong distinction between his case and that of a bishop. The leading precedent, however, and that upon which lawyers principally found their denial of this privilege to the bishops, is the case of Fisher, who was certainly tried before an ordinary jury; nor am I aware that any remonstrance was made by himself, or complaint by his friends, upon this ground. Cranmer was treated in the same manner; and from these two, being the most recent precedents, though neither of them in the best of times, the great plurality of law-books have drawn a conclusion that bishops are not entitled to trial by the temporal peers. Nor can there be much doubt that, whenever the occasion shall occur, this will be the decision of the House of Lords.

There are two peculiarities, as it may naturally appear, in the above-mentioned resolution of the lords in Stratford's case. The first is, that they claim to be tried, not only before their peers, but in Parliament. And in the case of the Bishop of Ely it is said to have been objected to his claim of trial by his peers, that Parliament was not then sitting. (Collier, ubi supra.) It is most probable, therefore, that the court of the lord high steward, for the special purpose of trying a peer, was of more recent institution—as appears also from Sir E. Coke's expressions. (4 Inst., p. 58.) The second circumstance that may strike a reader is, that the lords assert their privilege in all criminal cases, not distinguishing misdemeanors from treasons and felonies. But in this they were undoubtedly warranted by the clear language of Magna Charta, which makes no distinction of the kind. The practice of trying a peer for misdemeanours by a jury of commoners, concerning the origin of which I can say nothing, is one of those anomalies which too often render our laws capricious and unreasonable in the eyes of impartial men.

Since writing the above note I have read Stillingfleet's treatise on the judicial power of the bishops in capital cases—a right which, though now, I think, abrogated by non-claim and a course of contrary precedents, he proves beyond dispute to have ex-

isted by the common law and constitutions of Clar
have been occasionally exercised, and to have been
pended by their voluntary act. In the course of this
he treats of the peerage of the bishops, and produces
evidence from the records of Parliament that they w
peers, for which, though convinced from general re
I had not leisure or disposition to search. But if a
should remain, the statute 25 Edward III, c. 6, contains
tive declaration of the peerage of bishops. The whole
discussed with much perspicuity and force by Stilling
seems, however, not to press very greatly the right c
peers, aware no doubt of the weight of opposite p
(Stillingfleet's works, vol. iii, p. 820.) In one distinc
the bishops vote in their judicial functions as baron
legislation as magnates, which Warburton has brough
as his own in the "Alliance of Church and State," St
has perhaps not taken the strongest ground, nor s
accounted for their right of sitting in judgment on the
ment of a commoner. Parliamentary impeachment, upo
of high public crimes, seems to be the exercise of a rig
ent in the great council of the nation, some traces
appear even before the conquest ("Chron. Sax.," pp.
independent of and superseding that of trial by peers,
the twenty-ninth section of Magna Charta be strictly c
is only required upon indictments at the king's suit.
consideration is of great weight in the question, still
whether a commoner can be tried by the lords upon an
ment for treason.

The treatise of Stillingfleet was written on occasic
objection raised by the commons to the bishops votin
question of Lord Danby's pardon, which he pleaded
his impeachment. Burnet seems to suppose that thei
final judgment had never been defended, and confou
ment with sentence. Mr. Hargrave, strange to say, l
a much greater blunder, and imagined that the questic
to their right of voting on a bill of attainder, which i
believe, ever disputed. ("Notes on Co. Litt.," 134 b.)

II, page 576.—The constitution of Parliament in th
antecedent to the Great Charter, has been minutely an
lously investigated by the Lords' Committee on the D
a Peer in 1819. Two questions may be raised as to the
tion of the great council of the nation from the conqu
reign of John: first, Did it comprise any members,
from the counties or boroughs, not holding themse
deputed by others holding in chief of the crown by knig

or grand sergeanty? secondly, Were all such tenants in capite personally, or in contemplation of law, assisting, by advice and suffrage, in councils held for the purpose of laying on burdens, or for permanent and important legislation?

The former of these questions they readily determine. The committee have discovered no proof, nor any likelihood from analogy, that the great council, in these Norman reigns, was composed of any who did not hold in chief of the crown by a military tenure, or one in grand sergeanty; and they exclude, not only tenants in petty sergeanty and socage, but such as held of an escheated barony, or, as it was called, de honore.

They found more difficulty in the second question. It has generally been concluded, and I may have taken it for granted in my text, that all military tenants in capite were summoned, or ought to have been summoned, to any great council of the realm, whether for the purpose of levying a new tax or any other affecting the public weal. The committee, however, laudably cautious in drawing any positive inference, have moved step by step through this obscure path with a circumspection as honourable to themselves as it renders their ultimate judgment worthy of respect.

"The council of the kingdom, however composed (they are adverting to the reign of Henry I), must have been assembled by the king's command; and the king, therefore, may have assumed the power of selecting the persons to whom he addressed the command, especially if the object of assembling such a council was not to impose any burden on any of the subjects of the realm exempted from such burdens except by their own free grants. Whether the king was at this time considered as bound by any constitutional law to address such command to any particular persons, designated by law as essential parts of such an assembly for all purposes, the committee have been unable to ascertain. It has generally been considered as the law of the land that the king had a right to require the advice of any of his subjects, and their personal services, for the general benefit of the kingdom; but as, by the terms of the charters of Henry and of his father, no aid could be required of the immediate tenants of the crown by military service, beyond the obligation of their respective tenures, if the crown had occasion for any extraordinary aid from those tenants, it must have been necessary, according to law, to assemble all persons so holding, to give their consent to the imposition. Though the numbers of such tenants of the crown were not originally very great, as far as appears from 'Doomsday,' yet, if it was necessary to convene all to form a constitutional legislative assembly, the distances of their respective residences, and the inconvenience of

isting copies be correct, afford strong ground for presuming that owing suit to the king's great court rendered the tenant one of the king's barons or members of that court, though probably in general none attended who were not specially summoned. It has been already observed that this would not include all the king's tenants in chief, and particularly those who did not hold of him as of his crown, or even to all who did hold of him as of his crown, but not by knight-service or grand sergeanty, which were alone deemed military and honourable tenures; though, whether all who held of the king as of his crown, by knight-service or grand sergeanty, did originally owe suit to the king's court, or whether that obligation was confined to persons holding by a particular tenure, called tenure per baroniam, as has been asserted, the constitutions of Clarendon do not assist to ascertain" (p. 45). But this, as they point out, involves the question whether the Curia Regis, mentioned in these constitutions, was not only a judicial but a legislative assembly, or one competent to levy a tax on military tenants, since by the terms of the charter of Henry I, confirmed by that of Henry II, all such tenants were clearly exempted from taxation, except by their own consents.

They touch slightly on the reign of Richard I with the remark that "the result of all which they have found with respect to the constitution of the legislative assemblies of the realm still leaves the subject in great obscurity" (p. 49). But it is remarkable that they have never alluded to the presence of tenants in chief, knights as well as barons, at the Parliament of Northampton under Henry II. They come, however, rather suddenly to the conclusion that "the records of the reign of John seem to give strong ground for supposing that all the king's tenants in chief by military tenure, if not all the tenants in chief,[1] were at one time deemed necessary members of the common councils of the realm, when summoned for extraordinary purposes, and especially for the purpose of obtaining a grant of any extraordinary aid to the king; and this opinion accords with what has generally been deemed originally the law in France, or other countries where what is called the feudal system of tenures has been established" (p. 54). It can not surely admit of a doubt, and has been already affirmed more than once by the committee, that for an extraordinary grant of money the consent of military tenants in chief was required long before the reign of John. Nor was that a reign, till the enactment of the Great Charter,

[1] This hypothetical clause is somewhat remarkable. Grand sergeanty is of course included by parity under military service. But did any hold of the king in socage, except on his demesne lands? There might be some by petty sergeanty. Yet the committee, as we have just seen, absolutely exclude these from any share in the great councils of the Conqueror and his immediate descendants.

when any fresh extension of political liberty was like become established. But the difficulty may still re respect to " extraordinary purposes " of another descr

They observe afterward that " they have found no before the Great Charter of John in which the term barones ' has been used, though in some subsequent words of apparently similar import have been used. instrument itself it might be presumed that the term barones ' was then a term in some degree understood the distinction had, therefore, an earlier origin, thougl mittee have not found the term in any earlier instrumen But though the " Dialogue on the Exchequer," ge ferred to the reign of Henry II, is not an instrument, book of sufficient reputation, and in this we read: " (rege tenent in capite quæ ad coronam pertinent; baron majores seu minores." (Lib. ii, cap. 10.) It would to dispute that the tenant of a baronia major might a baro major. And what could the secundæ digi rones at Northampton have been but tenants in ca ing fiefs by some line or other distinguishable from class? [2]

It appears, therefore, on the whole, that in the of the committee, by no means indulgent in their req evidence, or disposed to take the more popular side, al tary tenants in capite were constitutionally members o mune concilium of the realm during the Norman co This commune concilium the committee distinguish fro num concilium, though it seems doubtful whether t any very definite line between the two. But that the these tenants was required for taxation they repeatedly edge. And there appears sufficient evidence that they casionally present for other important purposes. It is very probable that writs of summons were actually only to those of distinguished name, to those residen place of meeting, or to the servants and favourites of t This seems to be deducible from the words in the Grea which limit the king's engagement to summon all chief, through the sheriff, to the case of his requiring scutage, and still more from the withdrawing of this the first year of Henry III. The privilege of attendin

[2] Mr. Spence has ingeniously conjectured, observing that in some passages of "Doomsday" (he quotes two, but I only find one) the barons who held more than six manors paid their relief directly to the king, while those who had six or less paid theirs to the sheriff (Yorkshire, 298, b), that "this may tend to solve the disputed question as to what constituted one of the greater barons mentione na Charta of John and oth man documents; for, by a mode in which the relief greater barons were summ ticular writs, the rest by summons through the she tory of Equitable Jurisdictio

occasions, though legally general, may never have been generally exercised.

The committee seem to have been perplexed about the word magnates employed in several records to express part of those present in great councils. In general they interpret it, as well as the word proceres, to include persons not distinguished by the name "barones"; a word which in the reign of Henry III seems to have been chiefly used in the restricted sense it has latterly acquired. Yet in one instance, a letter addressed to the justiciar of Ireland, 1 Henry III, they suppose the word magnates to "exclude those termed therein 'alii quamplurimi'; and consequently to be confined to prelates, earls, and barons. This may be deemed important in the consideration of many other instruments in which the word magnates has been used to express persons constituting the 'commune concilium regni.'" But this strikes me as an erroneous construction of the letter. The words are as follows: "Convenerunt apud Glocestriam plures regni nostri magnates, episcopi, abbates, comites, et barones, qui patri nostro viventi semper astiterunt fideliter et devotè, et alii quamplurimi; applaudentibus clero et populo, etc., publicè fuimus in regem Angliæ inuncti et coronati" (p. 77). I think that magnates is a collective word, including the "alii quamplurimi." It appears to me that magnates, and perhaps some other Latin words, correspond to the witan of the Anglo-Saxons, expressing the legislature in general, under which were comprised those who held peculiar dignities, whether lay or spiritual. And upon the whole we may be led to believe that the Norman great council was essentially of the same composition as the witenagemot which had preceded it; the king's thanes being replaced by the barons of the first or second degree, who, whatever may have been the distinction between them, shared one common character, one source of their legislative rights—the derivation of their lands as immediate fiefs from the crown.

The result of the whole inquiry into the constitution of Parliament down to the reign of John seems to be: 1. That the Norman kings explicitly renounced all prerogative of levying money on the immediate military tenants of the crown, without their consent given in a great council of the realm; this immunity extending also to their sub-tenants and dependants. 2. That all these tenants in chief had a constitutional right to attend, and ought to be summoned; but whether they could attend without a summons is not manifest. 3. That the summons was usually directed to the higher barons, and to such of a second class as the king pleased, many being omitted for different reasons, though all had a right to it. 4. That on occasions when money was not to be demanded, but alterations made in the law,

some of these second barons, or tenants in chief, we occasionally summoned, but whether by strict right does not fully appear. 5. That the irregularity of pas of them over when councils were held for the purpose money, led to the provision in the Great Charter o which the king promises that they shall all be summon the sheriff on such occasions; but the promise does to any other subject of parliamentary deliberation. even this concession, though but the recognition of right, appeared so dangerous to some in the governm was withdrawn in the first charter of Henry III.

The charter of John, as has just been observed, moves all doubt, if any could have been entertained right of every military tenant in capite to be summon the sheriff, when an aid or scutage was to be dem not of itself establish their right of attending Parliame occasions. We can not absolutely assume any to ha a general sense, members of the legislature except t and the majores barones. But who were these, an tinguished? For distinguished they must now hav and that by no new provision, since none is made. of personal summons did not constitute them, for it is barones, as already a determinate rank, that the rig ferred. The extent of property afforded no definite at least some baronies, which appear to have been class, comprehended very few knights' fees; yet it s able that this was the original ground of distinction.[8]

The charter, as renewed in the first year of Henr not only omit the clause prohibiting the imposition scutages without consent, and providing for the sum tenants in capite before either could be levied, but following reason for suspending this and other artic John's charter: "Quia vero quædam capitula in p continebantur, quæ gravia et dubitabilia videbantu scutagiis et auxiliis assidendis . . . placuit supra-dic et magnatibus ea esse in respectu, quousque plenius habuerimus, et tunc faciemus plurissimè, tam de hi aliis quæ occurrerint emendanda, quæ ad communem utilitatem pertinuerint, et pacem et statum nostrum nostri." This charter was made but twenty-four da death of John; and we may agree with the committe thinking it extraordinary that these deviations from of Runnymede, in such important particulars, have be

[8] See quotation from Spence's "Equitable Jurisdiction," a little above. The barony of Berkeley was granted in 1 Richard I, to be holden by the service of five knights, which was duced to three. Nicolas' Claim to Barony of L'Isl p. 318.)

noticed. It is worthy of consideration in what respects the provisions respecting the levying of money could have appeared grave and doubtful. We can not believe that the Earl of Pembroke, and the other barons who were with the young king, himself a child of nine years old and incapable of taking a part, meant to abandon the constitutional privilege of not being taxed in aids without their consent. But this they might deem sufficiently provided for by the charters of former kings and by general usage. It is not, however, impossible that the government demurred to the prohibition of levying scutage, which stood on a different footing from extraordinary aids; for scutage appears to have been formerly taken without consent of the tenants; and in the second charter of Henry III there is a clause that it should be taken as it had been in the time of Henry II. This was a certain payment for every knight's fee; but if the original provision of the Runnymede charter had been maintained, none could have been levied without consent of Parliament.

It seems also highly probable that, before the principle of representation had been established, the greater barons looked with jealousy on the equality of suffrage claimed by the inferior tenants in capite. That these were constitutionally members of the great council, at least in respect of taxation, has been sufficiently shown; but they had hitherto come in small numbers, likely to act always in subordination to the more potent aristocracy. It became another question whether they should all be summoned, in their own counties, by a writ selecting no one through favour, and in its terms compelling all to obey. And this question was less for the crown, which might possibly find its advantage in the disunion of its tenants, than for the barons themselves. They would naturally be jealous of a second order, whom in their haughtiness they held much beneath them, yet by whom they might be outnumbered in those councils where they had bearded the king. No effectual or permanent compromise could be made but by representation, and the hour for representation was not come.

III, page 585.—The Lords' Committee, though not very confidently, take the view of Brady and Blackstone, confining the electors of knights to tenants in capite. They admit that "the subsequent usage, and the subsequent statutes founded on that usage, afford ground for supposing that in the forty-ninth of Henry III and in the reign of Edward I the knights of the shires returned to Parliament were elected at the county courts and by the suitors of those courts. If the knights of the shires were so elected in the reigns of Henry III and Edward I, it seems important to discover, if possible, who were the suitors of the

county courts in these reigns" (p. 149). The subje compelled to confess, after a discussion of some leng involved in great obscurity, which their industry ha able to disperse. They had, however, in an earlier p report (p. 30), thought it highly probable that the the shires in the reign of Edward III represented a of persons who might in the reign of the Conqueror termed barons. And the general spirit of their sub vestigation seems to favour this result, though they fi what recede from it, and admit at least that, before t Edward III's reign, the elective franchise extended to

The question, as the committee have stated it, w the character of those who were suitors to the co And, if this may be granted, I must own that to my sion there is no room for the hypothesis that the cc was differently constituted in the reign of Edward I or III from what it was very lately, and what it was l those princes sat on the throne. In the Anglo-Sa we find this court composed of thanes, but not ex royal thanes, who were comparatively few. In the law I we still find sufficient evidence that the suitors o were all who held freehold lands, terrarum domini; we please to limit this to lords of manors, which is probable, still without distinction of a mesne or tenure. Vavassors—that is, mesne tenants—are mentioned in one enumeration of barons attending In some counties a limitation to tenants in capite left this important tribunal very deficient in numbers. all our law-books we find the county court compos holders, we may reasonably demand evidence of two its constitution, which the adherents to the theory o representation must combine—one which excluded a ers except those who held immediately of the crow which restored them. The notion that the county the king's court baron ("Report," p. 150), and th analogy to that of the lord in every manor, whether any modern legal authority or not, seems delusive. baron was essentially a feudal institution; the county from a different source; it was old Teutonic, and s this and other countries before the feudal jurisdictions root. It is a serious error to conceive that, because alterations were introduced by the Normans, there w left of the old system of society.[4]

[4] A charter of Henry I, published in the new edition of Rymer (i, p. 12), fully confirms what is here said. Sciatis quod concedo et præcipio, ut à tus mei et hundreda in il dem terminis sedeant, sic

It may, however, be naturally inquired why, if the king's tenants in chief were exclusively members of the national council before the era of county representation, they did not retain that privilege; especially if we conceive, as seems on the whole probable, that the knights chosen in 38 Henry III were actually representatives of the military tenants of the crown. The answer might be that these knights do not appear to have been elected in the county court; and when that mode of choosing knights of the shire was adopted, it was but consonant to the increasing spirit of liberty, and to the weight also of the barons, whose tenants crowded the court, that no freeholder should be debarred of his equal suffrage. But this became the more important, and we might almost add necessary, when the feudal aids were replaced by subsidies on movables; so that, unless the mesne freeholders could vote at county elections, they would have been taxed without their consent and placed in a worse condition than ordinary burgesses. This of itself seems almost a decisive argument to prove that they must have joined in the election of knights of the shire after the Confirmatio Chartarum. If we were to go down so late as Richard II, and some pretend that the mesne freeholders did not vote before the reign of Henry IV, we find Chaucer's franklin, a vavassor, capable even of sitting in Parliament for his shire. For I do not think Chaucer ignorant of the proper meaning of that word. And Allen says ("Edinb. Rev.," xxviii, 145): "In the earliest records of the House of Commons we have found many instances of subvassals who have represented their counties in Parliament."

If, however, it should be suggested that the practice of admitting the votes of mesne tenants at county elections may have crept in by degrees, partly by the constitutional principle of common consent, partly on account of the broad demarcation of tenants in capite by knight-service from barons, which the separation of the Houses of Parliament produced, thus tending, by diminishing the importance of the former, to bring them down to the level of other freeholders; partly, also, through the operation of the statute Quia Emptores (18 Edward I), which, by putting an end to subinfeudation, created a new tenant of the crown upon every alienation of land, however partial, by one who was such already, and thus both multiplied their numbers and lowered their dignity; this supposition, though incompatible with

tempore regis Edwardi, et non aliter. Ego enim, quando voluero, faciam ea satis summoneri propter mea dominica necessaria ad voluntatem meam. Et si modo exurgat placitum de divisione terrarum, si est inter barones meos dominicos, tractetur placitum in curea mea. Et si est inter vavassores duorum dominorum, tractetur in comitatu. Et hoc duello fiat, nisi in eis remanserit. Et volo et præcipio, ut omnes de comitatu eant ad comitatus et hundreda, sicut fecerunt in tempore regis Edwardi. But it is also easily proved from the "Leges Henrici Primi."

the argument built on the nature of the county court sufficient to explain the facts, provided we do not date lishment of the new usage too low. The Lords' themselves, after much wavering, come to the concl "at length, if not always, two persons were elected freeholders of the county, whether holding in chief of or of others" (p. 331). This they infer from the p the commons that the mesne tenants should be ch the wages of knights of the shire; since it would not able to levy such wages from those who had no voice i tion. They ultimately incline to the hypothesis that t came in silently, favoured by the growing tendency the basis of the constitution, and by the operation of Quia Emptores, which may not have been of inconsi fluence. It appears by a petition in 51 Edward III confusion had arisen with respect to tenures; and i quently disputed whether lands were held of the l other lords. This question would often turn on tl alienation; and, in the hurry of an election, the bias be in favour of an extended suffrage, it is to be suppose sheriff would not reject a claim to vote which he had to investigate.

IV, page 586.—It now appears more probable t it did that some of the greater towns, but almost u ably London, did enjoy the right of electing magistr certain jurisdiction before the conquest. The notio found prevailing among the writers of the last cer the municipal privileges of towns on the Continent w derived from charters of the twelfth century, though I of some degree of limitation which it required, sway much in estimating the condition of our own burgess must fairly admit that I have laid too much stress on of "Doomsday Book"; which, as has been justly p does not relate to matters of internal government, u they involve some rights of property.

I do not conceive, nevertheless, that the municip ment of Anglo-Saxon boroughs was analogous to tha established in our corporations from the reign of He his successors. The real presumption has been acutel by Sir F. Palgrave, arising from the universal institu court-leet, which gave to an alderman, or otherwise de officer, chosen by the suitors, a jurisdiction, in conjur themselves as a jury, over the greater part of civil di criminal accusations, as well as general police, that n within the hundred. Wherever the town or boroug

large to be included within a hundred, this would imply a distinct jurisdiction, which may, of course, be called municipal. It would be similar to that which, till lately, existed in some towns—an elective high bailiff or principal magistrate, without a representative body of aldermen and councillors. But this is more distinctly proved with respect to London, which, as is well known, does not appear in "Doomsday," than as to any other town. It was divided into wards, answering to hundreds in the county; each having its own wardmote, or leet, under its elected alderman. "The city of London, as well within the walls as its liberties without the walls, has been divided from time immemorial into wards, bearing nearly the same relation to the city that the hundred anciently did to the shire. Each ward is, for certain purposes, a distinct jurisdiction. The organization of the existing municipal constitution of the city is, and always has been, as far as can be traced, entirely founded upon the ward system." (Introduction to the "French Chronicle of London," Camden Society, 1844.)

Sir F. Palgrave extends this much further: "There were certain districts locally included within the hundreds, which nevertheless constituted independent bodies politic. The burgesses, the tenants, the resiants of the king's burghs and manors in ancient demesne, owed neither suit nor service to the hundred leet. They attended at their own leet, which differed in no essential respect from the leet of the hundred. The principle of frankpledge required that each friborg should appear by its head as its representative; and, consequently, the jurymen of the leet of the burgh or manor are usually described under the style of the twelve chief pledges. The legislative and remedial assembly of the burgh or manor was constituted by the meeting of the heads of its component parts. The portreeve, constable, head-borough, bailiff, or other chief executive magistrate, was elected or presented by the leet jury. Offences against the law were repressed by their summary presentments. They who were answerable to the community for the breach of the peace punished the crime. Responsibility and authority were conjoined. In their legislative capacity they bound their fellow-townsmen by making by-laws." ("Edinb. Rev.," xxxvi, 309.) "'Doomsday Book,'" he says afterward, "does not notice the hundred court or the county court, because it was unnecessary to inform the king or his justiciaries of the existence of the tribunals which were in constant action throughout all the land. It was equally unnecessary to make a return of the leets which they knew to be inherent in every burgh. Where any special municipal jurisdiction existed, as in Chester, Stamford, and Lincoln, then it became necessary that the franchise should be recorded. The

twelve lagemen in the two latter burghs were probably aldermen. In London and in Canterbury aldermen c held their sokes by inheritance.[5] The negative eviden out of 'Doomsday' has, therefore, little weight" (p.

It seems, however, not unquestionable whether sentation of an Anglo-Saxon and Anglo-Norman r is not urged rather beyond the truth. The portreeve their principal magistrate, appears to have been ap the crown. It was not till 1188 that Henry Fitzalwy of the present Lord Beaumont,[6] became the first may don. But he also was nominated by the crown, an twenty-four years in office. In the same year the f are said to have been made (facti). But John, imme his accession in 1199, granted the citizens leave to c own sheriffs. And his charter of 1215 permits th annually their mayor. (Maitland's "Hist. of Londc 76.) We read, however, under the year 1200, in chronicle lately published, that twenty-five of the m men of the city were chosen and sworn to advise f together with the mayor. These were evidently dif the aldermen, and are the original common council They were perhaps meant in a later entry (1229): "O manni et magnates civitatis per assensum universor who are said to have agreed never to permit a sheri in office during two consecutive years.

The city and liberties of London were not wl the jurisdiction of the several wardmotes and thei Landholders, secular and ecclesiastical, possessed the sokes, or jurisdictions, in parts of both. One of th its name to the ward of Portsoken. The prior o Trinity, in right of this district, ranked as an alderma a regular wardmote. The wards of Farringdon are c from a family of that name, who held a part of them b right as their territorial franchise. These sokes g gradually before the power of the citizens, with wh be supposed, a perpetual conflict was maintained, tha nearly thirty of them in the early part of the reig III, and upward of twenty in that of Edward I. W ception of Portsoken, they were not commensura city wards, and we find the juries of the wards, in Edward I, presenting the sokes as liberties enjoyed

[5] See the ensuing part of this note.

[6] This pedigree is elaborately and with pious care traced by Mr. Stapleton, in his excellent introduction to the old chronicle of London, already quoted. The name Alwyn appears rather Saxon than Norman, so that we m first mayor to have been scent; but whether he w or a landholder living in be undecided.

persons or ecclesiastical corporations, to the detriment of the crown. But, though the lord of these sokes trenched materially on the exclusive privileges of the city, it is remarkable that, no condition but inhabitancy being required in the thirteenth century for civic franchises, both they and their tenants were citizens, having individually a voice in municipal affairs, though exempt from municipal jurisdiction. I have taken most of this paragraph from a valuable though short notice of the state of London in the thirteenth century, published in the fourth volume of the "Archæological Journal" (p. 273).

The inference which suggests itself from these facts is that London, for more than two centuries after the conquest, was not so exclusively a city of traders, a democratic municipality, as we have been wont to conceive. And as this evidently extends back to the Anglo-Saxon period, it both lessens the improbability that the citizens bore at times a part in political affairs, and exhibits them in a new light, as lords and tenants of lords, as well as what, of course, they were in part, engaged in foreign and domestic commerce. It will strike every one, in running over the list of mayors and sheriffs in the thirteenth century, that a large proportion of the names are French; indicating, perhaps, that the territorial proprietors whose sokes were intermingled with the city had influence enough, through birth and wealth, to obtain an election. The general polity, Saxon and Norman, was aristocratic; whatever infusion there might be of a more popular scheme of government, and much certainly there was, could not resist, even if resistance had been always the people's desire, the joint predominance of rank, riches, military habits, and common alliance, which the great baronage of the realm enjoyed. London, nevertheless, from its populousness, and the usual character of cities, was the centre of a democratic power, which, bursting at times into precipitate and needless tumult easily repressed by force, kept on its silent course till, near the end of the thirteenth century, the rights of the citizens and burgesses in the legislature were constitutionally established. [1848.]

V, page 590.—If Fitz-Stephen rightly informs us that in London there were one hundred and twenty-six parish churches, besides thirteen conventual ones, we may naturally think the population much underrated at forty thousand. But the fashion of building churches in cities was so general that we can not apply a standard from modern times. Norwich contained sixty parishes.

Even under Henry II, as we find by Fitz-Stephen, the prelates and nobles had town houses. "Ad hæc omnes fere episcopi, abbates, et magnates Angliæ, quasi cives et municipes sunt urbis

Lundoniæ; sua ibi habentes ædificia præclara; ubi s
ubi divites impensas faciunt, ad concilia, ad convent
in urbem evocati, à domino rege vel metropolitano su
priis tracti negotiis." The eulogy of London by th
very curious; its citizens were thus early distinguish
good eating, to which they added amusements less
to later liverymen, hawking, cock-fighting, and much
word cockney is not improbably derived from cocayn
of an imaginary land of ease and jollity.

The city of London within the walls was not w
many gardens and open spaces remaining. And the h
never more than a single story above the ground flo
ing to the uniform type of English dwellings in the
following centuries. On the other hand, the libertie
many inhabitants; the streets were narrower than si
of 1666; and the vast spaces now occupied by wareh
have been covered by dwelling houses. Forty thous
whole, seems rather a low estimate for these two ce
it is impossible to go beyond the vaguest conjecture.

The population of Paris in the middle ages has
mated with as much diversity as that of London. M
on the basis of the taille in 1313, reckons the inh
49,110.[7] But he seems to have made unwarrantab
tions where his data were deficient. M. Guérard, o
hand ("Documens Inédits," 1841), after long calculat
the poulation of the city in 1292 to 215,861. This
very much more than we could assign to London, c
any European city; and, in fact, his estimate goes o
trary postulates. The extent of Paris in that age, wh
ably known, must be decisive against so high a popul

The "Winton Doomsday," in the possession of
of Antiquaries of London, furnishes some importa
tion as to that city, which, as well as London, does
in the great "Doomsday Book." This record is of t
Henry I. Winchester had been, as is well known,
of the Anglo-Saxon kings. It has been observed tha
lence of the inhabitants may possibly be gathered fr
quent recurrence of the trade of goldsmith in it, an
lousness of the town from the enumeration of th
(Cooper's "Public Records," i, 226.) Of these we fi
"In the petition from the city of Winchester to King

[7] "Hist. de Paris," vol. iii, p. 231.

[8] John of Troyes says, in 1467, that from sixty to eighty thousand men appeared in arms. Dulaure ("Hist. de Paris," vol. iii, p. 505) says this gives 120,000 for the whole population; but it gives double, which is the thirteenth and fourt the houses were still cott streets were paved; they row and dirty, and often in Seine. (Ib., p. 198.)

in 1450, no less than nine of these streets are mentioned as having been ruined." As York appears to have contained about ten thousand inhabitants under the Confessor, we may probably compute the population of Winchester at nearly twice that number.

VI, page 595.—The Lords' Committee extenuate the presumption that either knights or burgesses sat in any of these Parliaments. The "cunctarum regni civitatum pariter et burgorum potentiores," mentioned by Wikes in 1269 or 1270, they suppose to have been invited in order to witness the ceremony of translating the body of Edward the Confessor to his tomb newly prepared in Westminster Abbey (p. 161). It is evident, indeed, that this assembly acted afterward as a Parliament in levying money. But the burgesses are not mentioned in this. It can not, nevertheless, be presumed from the silence of the historian, who had previously informed us of their presence at Westminster, that they took no part. It may be, perhaps, more doubtful whether they were chosen by their constituents or merely summoned as "potentiores."

The words of the statute of Marlbridge (51 Henry III), which are repeated in French by that of Gloucester (6 Edward I), do not satisfy the committee that there was any representation either of counties or boroughs. "They rather import a selection by the king of the most discreet men of every degree" (p. 183). And the statutes of 13 Edward I, referring to this of Gloucester, assert it to have been made by the king, "with prelates, earls, barons, and his council," thus seeming to exclude what would afterward have been called the lower House. The assembly of 1271, described in the "Annals of Waverley, "seems to have been an extraordinary convention, warranted rather by the particular circumstances under which the country was placed than by any constitutional law" (p. 173). It was, however, a case of representation; and following several of the like nature, at least as far as counties were concerned, would render the principle familiar. The committee are even unwilling to admit that "la communauté de la terre illocques summons" in the statute of Westminster I, though expressly distinguished from the prelates, earls, and barons, appeared in consequence of election (p. 173). But, if not elected, we can not suppose less than that all the tenants in chief, or a large number of them, were summoned; which, after the experience of representation, was hardly a probable course.

The Lords' Committee, I must still incline to think, have gone too far when they come to the conclusion that, on the whole view of the evidence collected on the subject, from the

forty-ninth of Henry III to the eighteenth of Edward I, there seems strong ground for presuming that, after the forty-ninth of Henry III, the constitution of the legislative assembly returned generally to its old course; that the writs issued in the forty-ninth of Henry III, being a novelty, were not afterward precisely followed, as far as appears, in any instance; and that the writs issued in the eleventh of Edward I, "for assembling two conventions, at York and Northampton, of knights, citizens, burgesses, and representatives of towns, without prelates, earls, and barons, were an extraordinary measure, probably adopted for the occasion, and never afterward followed; and that the writs issued in the eighteenth of Edward I, for electing two or three knights for each shire without corresponding writs for election of citizens or burgesses, and not directly founded on or conformable to the writs issued in the forty-ninth of Henry III, were probably adopted for a particular purpose, possibly to sanction one important law [the statute Quia Emptores], and because the smaller tenants in chief of the crown rarely attended the ordinary legislative assemblies when summoned, or attended in such small numbers that a representation of them by knights chosen for the whole shire was deemed advisable, to give sanction to a law materially affecting all the tenants in chief, and those holding under them" (p. 204).

The election of two or three knights for the Parliament of 18 Edward I, which I have overlooked in my text, appears by an entry on the close roll of that year, directed to the sheriff of Northumberland; and it is proved from the same roll that similar writs were directed to all the sheriffs in England. We do not find that the citizens and burgesses were present in this Parliament; and it is reasonably conjectured that, the object of summoning it being to procure a legislative consent to the statute Quia Emptores, which put an end to the subinfeudation of lands, the towns were thought to have little interest in the measure. It is, however, another early precedent for county representation; and that of the twenty-second of Edward I (see the writ in "Report of Committee," p. 209) is more regular. We do not find that the citizens and burgesses were summoned to either Parliament.

But, after the twenty-third of Edward I, the legislative constitution seems not to have been unquestionably settled, even in the essential point of taxation. The Confirmation of the Charters, in the twenty-fifth year of that reign, while it contained a positive declaration that no "aids, tasks, or prizes should be levied in future, without assent of the realm," was made in consideration of a grant made by an assembly in which representatives of cities and boroughs do not appear to have been present.

Yet, though the words of the charter or statute are prospective, it seems to have long before been reckoned a clear right of the subject, at least by himself, not to be taxed without his consent. A tallage on royal towns and demesnes, nevertheless, was set without authority of Parliament four years afterward. This "seems to show either that the king's right to tax his demesnes at his pleasure was not intended to be included in the word tallage in that statute [meaning the supposed statute de tallagio non concedendo], or that the king acted in contravention of it. But if the king's cities and boroughs were still liable to tallage at the will of the crown, it may not have been deemed inconsistent that they should be required to send representatives for the purpose of granting a general aid to be assessed on the same cities and boroughs, together with the rest of the kingdom, when such general aid was granted, and yet should be liable to be tallaged at the will of the crown when no such general aid was granted" (p. 244).

If in these later years of Edward's reign the king could venture on so strong a measure as the imposition of a tallage without consent of those on whom it was levied, it is less surprising that no representatives of the commons appear to have been summoned to one Parliament, or perhaps two, in his twenty-seventh year, when some statutes were enacted. But, as this is merely inferred from the want of any extant writ, which is also the case in some Parliaments where, from other sources, we can trace the commons to have been present, little stress should be laid upon it.

In the remarks which I have offered in these notes on the "Report of the Lords' Committee" I have generally abstained from repeating any which Mr. Allen brought forward. But the reader should have recourse to his learned criticism in the "Edinburgh Review." It will appear that the committee overlooked not a few important records, both in the reign of Edward I and that of his son.

VII, page 597.—Two considerable authorities have, since the first publication of this work, placed themselves, one very confidently, one much less so, on the side of our older lawyers and in favour of the antiquity of borough representation. Mr. Allen, who, in his review of my volumes ("Edinb. Rev.," xxx, 169), observes, as to this point, "We are inclined, in the main, to agree with Mr. Hallam," lets us know, two or three years afterward, that the scale was tending the other way, when, in his review of the "Report of the Lords' Committee," who give a decided opinion that cities and boroughs were on no occasion called upon to assist at legislative meetings before the forty-ninth of Henry III, and are much disposed to believe that none were

originally summoned to Parliament, except cities and
of ancient demesnes, or in the hands of the king a
when they received the summons, he says, "We are
doubt the first of these propositions, and convinced tha
is entirely erroneous." ("Edinb. Rev.," xxxv, 30.)
however, that our kings had no motive to summon
and boroughs to the legislature, for the purpose of
money, "this being procured through the justices i
special commissioners; and therefore, if summoned
probable that the citizens and burgesses were assembl
ticular occasions only, when their assistance or aut
wanted to confirm or establish the measures in con
by the government." But as he alleges no proof tha
ever done, and merely descants on the importance
and other cities both before and after the conquest, a
an occasional summons to a great council, for the
advice, would by no means involve the necessity of
consent, we can hardly reckon this very acute writer
positive advocates of a high antiquity for the commo
liament.

Sir Francis Palgrave has taken much higher gr
his theory, in part at least, would have been hailed wit
by the Parliaments of Charles I. According to this,
to look to feudal principles for our great councils of
consent. They were the aggregate of representative
courts-leet of each shire and each borough, and elec
juries to present the grievances of the people and
their remedies. The assembly summoned by Willian
queror appears to him not only, as it did to Lord Ha
ficient Parliament," but a regular one, "proposing tl
giving the initiation to the bill which required the k
sent." ("Edinb. Rev.," xxxvi, 327.) "We can not
ceeds, "discover any essential difference between the
these juries and the share of the legislative authority
enjoyed by the commons at a period when the const
sumed a more tangible shape and form." This is supp
that copiousness and variety of illustration which dist
theories, even when there hangs over them somethin
satisfactory to a rigorous inquirer, and when their abs
nality on a subject so beaten is of itself reasonably
Thus we come in a few pages to the conclusion: "Cert
is no theory so improbable, so irreconcilable to g
tory or to the peculiar spirit of our constitution, as
ions which are held by those who deny the substantia
of the House of Commons. No paradox is so start
assumption that the knights and burgesses who sto

great council between the close of the reign of John and the beginning of the reign of Edward should convert themselves at once into the third estate of the realm, and stand before the king and his peers in possession of powers and privileges which the original branches of the legislature could neither dispute nor withstand" (p. 332). "It must not be forgotten that the researches of all previous writers have been directed wholly in furtherance of the opinions which have been held respecting the feudal origin of Parliament. No one has considered it as a common-law court."

I do not know that it is necessary to believe in a properly feudal origin of Parliament, or that this hypothesis is generally received. The great council of the Norman kings was, as in common with Sir F. Palgrave and many others, I believe, little else than a continuation of the witenagemot, the immemorial organ of the Anglo-Saxon aristocracy in their relation to the king. It might be composed, perhaps, more strictly according to feudal principles; but the royal thanes had always been consenting parties. Of the representation of courts-leet we may require better evidence: aldermen of London, or persons bearing that name, perhaps as land-owners rather than citizens (see a former note), may possibly have been occasionally present; but it is remarkable that neither in historians nor records do we find this mentioned; that aldermen, in the municipal sense, are never enumerated among the constituents of a witenagemot or a council, though they must, on the representative theory, have composed a large portion of both. But, waiving this hypothesis, which the author seems not here to insist upon, though he returns to it in the "Rise and Progress of the English Commonwealth," why is it "a startling paradox to deny the substantial antiquity of the House of Commons"? By this I understand him to mean that representatives from counties and boroughs came regularly, or at least frequently, to the great councils of Saxon and Norman kings. Their indispensable consent in legislation I do not apprehend him to affirm, but rather the reverse: "The supposition that in any early period the burgesses had a voice in the solemn acts of the legislature is untenable." ("Rise and Progress," etc., i, 314.) But they certainly did, at one time or other, obtain this right, "or convert themselves," as he expresses it, "into the third estate of the realm," so that upon any hypothesis a great constitutional change was wrought in the powers of the commons. The revolutionary character of Montfort's Parliament in the forty-ninth of Henry III would sufficiently account both for the appearance of representatives from a democracy so favourable to that bold reformer and for the equality of power with which it was probably designed to invest them.

But whether in the more peaceable times of Edwa
zens or burgesses were recognised as essential par
legislative measure may, as I have shown, be open to

I can not, upon the whole, overcome the argum
silence of all historians, from the deficiency of all
any presence of citizens and burgesses, in a represe
acter as a House of Commons, before the forty-n
Henry III; because after this time historians an
exactly of the same character as the former, or ev
ous and valuable, do not omit to mention it. We ar
in the sister kingdoms, so to speak, of the Contin
on the same Teutonic original, to argue against the
representative councils, or other institutions, from
sence of positive testimony. No one believes th
estates of France were called together before the ti
the Fair. No one strains the representation of cities
of Castile beyond the date at which we discover
by testimony. It is true that unreasonable infere
made from what is usually called negative eviden
readily and how often are we deceived by a relia
mony! In many instances the negative conclusion
it a conviction equal to a great mass of affirmative
such I reckon the inference from the language of I
den, of Matthew Paris, and so many more who spea
and Parliaments full of prelates and nobles, witho
of the burgesses. Either they were absent or th
insignificant to be named; and in that case it is har
any motive for requiring their attendance.

VIII, page 603.—A record, which may be rea
"History of England" (vol. ii, appendix, p. 66) a
(tome iv, p. 1237), relative to the proceedings on
flight into Wales and subsequent detention, recite
king having left his kingdom without governmen
away with notorious enemies of the queen, prince
divers prelates, earls, barons, and knights, then bei
in the presence of the said queen and duke (Prince E
of Cornwall), by the assent of the whole commonalty
there being, unanimously elected the said duke to
of the said kingdom; so that the said duke and gua
rule and govern the said realm in the name and by
of the king his father, he being thus absent." But th
taken and brought back into England, the power th
to the guardian ceased, of course; whereupon the Bis
ford was sent to press the king to permit that th
which he had with him, the prince having only use

seal, should be used in all things that required it. Accordingly, the king sent the great seal to the queen and prince. The bishop is said to have been thus commissioned to fetch the seal by the prince and queen, and by the said prelates and peers, with the assent of the said commonalty then being at Hereford. It is plain that these were mere words, of course; for no Parliament had been convoked, and no proper representatives could have been either at Bristol or Hereford. However, this is a very curious record, inasmuch as it proves the importance attached to the forms of the constitution at this period.

The Lords' Committee dwell much on an enactment in the Parliament held at York in 15 Edward II (1322), which they conceived to be the first express recognition of the constitutional powers of the lower House. It was there enacted that "forever thereafter all manner of ordinances or provisions made by the subjects of the king or his heirs, by any power or authority whatsoever, concerning the royal power of the king or his heirs, or against the estate of the crown, should be void and of no avail or force whatsoever; but the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed. This proceeding, therefore, declared the legislative authority to reside only in the king, with the assent of the prelates, earls, and barons, and commons assembled in Parliament; and that every legislative act not done by that authority should be deemed void and of no effect. By whatever violence this statute may have been obtained, it declared the constitutional law of the realm on this important subject" (p. 282). The violence, if resistance to the usurpation of a subject is to be called such, was on the part of the king, who had just sent the Earl of Lancaster to the scaffold, and the present enactment was levelled at the ordinances which had been forced upon the crown by his faction. The lords ordainers, nevertheless, had been appointed with consent of the commons, as has been mentioned in the text; so that this provision in 15 Edward II seems rather to limit than to enhance the supreme power of Parliament, if it were meant to prohibit any future enactment of the same kind by its sole authority. But the statute is declaratory in its nature; nor can we any more doubt that the legislative authority was reposed in the king, lords, and commons before this era than that it was so ever afterward. Unsteady as the constitutional usage had been through the reign of Edward I, and willing as both he and his son may have been to prevent its complete establishment, the necessity of parliamentary consent both for levying

have been in the reign of John distinguished as majores barones by the honour of a personal writ of summons, or by the extent and influence of their property, from the other tenants in chief of the crown, were now clearly become, with the earls and the newly created dignity of duke, a distinct body of men denominated peers of the land, and having distinct personal rights; while the other tenants in chief, whatsoever their rights may have been in the reign of John, sunk into the general mass" (p. 314).

The appellation "peers of the land" is said to occur for the first time in 14 Edward II (p. 281), and we find them very distinctly in the proceedings against Bereford and others at the beginning of the next reign. They were, of course, entitled to trial by their own order. But whether all laymen summoned by particular writs to Parliament were at that time considered as peers, and triable by the rest as such, must be questionable, unless we could assume that the writ of summons already ennobled the blood, which is at least not the opinion of the committee. If, therefore, the writ did not constitute an hereditary peer, nor tenure in chief by barony give a right to sit in Parliament, we should have a difficulty in finding any determinate estate of nobility at all, exclusive of earls, who were, at all times and without exception, indisputably noble; an hypothesis manifestly paradoxical, and contradicted by history and law. If it be said that prescription was the only title, this may be so far granted that the majores barones had by prescription, antecedent to any statute or charter, been summoned to Parliament; but this prescription would not be broken by the omission, through negligence or policy, of an individual tenant by barony in a few Parliaments. The prescription was properly in favour of the class, the majores barones generally, and as to them it was perfect, extending itself in right, if not always in fact, to every one who came within its scope.

In the "Third Report" of the Lords' Committee, apparently drawn by the same hand as the second, they "conjecture that after the establishment of the commons' House of Parliament as a body by election, separate and distinct from the lords, all idea of a right to a writ of summons to Parliament by reason of tenure had ceased, and that the dignity of baron, if not conferred by patent, was considered as derived only from the king's writ of summons." ("Third Report," p. 226.) Yet they have not only found many cases of persons summoned by writ several times whose descendants have not been summoned, and hesitate even to approve the decision of the House on the Clifton barony in 1673, when it was determined that the claimant's ancestor, by writ of summons and sitting in Parliament, was a peer, but doubt whether "even at this day the doctrine of that case

tenure as the foundation of a right to sit in Parliament, but of its alienability by the tenant.[10]

If it be asked whether the posterity of a baron aliening the lands which gave him a right to be summoned to the king's court would be entitled to the privileges of peerage by nobility of blood, it is true that, according to Collins, whose opinion the committee incline to follow, there are instances of persons in such circumstances being summoned. But this seems not to prove anything to the purpose. The king, no one doubts, from the time of Edward I, used to summon by writ many who had no baronial tenure; and the circumstance of having alienated a barony could not render any one incapable of attending Parliament by a different title. It is very hard to determine any question as to times of much irregularity; but it seems that the posterity of one who had parted with his baronial lands would not, in those early times, as a matter of course, remain noble. A right by tenure seems to exclude a right by blood; not necessarily, because two collateral titles may coexist, but in the principle of the constitution. A feudal principle was surely the more ancient; and what could be more alien to this than a baron, a peer, an hereditary counsellor, without a fief? Nobility, that is, gentility of birth, might be testified by a pedigree or a bearing; but a peer was to be in arms for the crown, to grant his own money as well as that of others, to lead his vassals, to advise, to exhort, to restrain the sovereign. The new theory came in by degrees, but in the decay of every feudal idea; it was the substitution of a different pride of aristocracy for that of baronial wealth and power; a pride nourished by heralds, more peaceable, more indolent, more accommodated to the rules of fixed law and vigorous monarchy. It is difficult to trace the progress of this theory, which rested on nobility of blood, but yet so remarkably modified by the original principle of tenure, that the privileges of this nobility were ever confined to the actual possessors, and did not take his kindred out of the class of commoners. This sufficiently demonstrates that the phrase is, so to say, catachrestic, not used in a proper sense; inasmuch as the actual seizin of the peerage as an hereditament, whether by writ or by patent, is as much requisite at present for nobility as the seizin of an estate by barony was in the reign of Henry III.

Tenure by barony appears to have been recognised by the House of Lords in the reign of Henry VI, when the earldom of Arundel was claimed as annexed to the "castle, honour, and lordship aforesaid." The Lords' Committee have elaborately dis-

[10] The Lords' Committee ("Second Report," p. 436) endeavour to elude the force of this authority; but it manifestly appears that the Nevilles were preferred to the Fanes for the particular barony in question; though some satisfaction was made to the claimant of the latter family by calling her to a different peerage.

proved the allegations of descent and tenure, on whic
was allowed. ("Second Report," pp. 406–426.) E
which we are concerned is the decision of the crown
House in the eleventh year of Henry VI, whether it
or wrong as to the particular facts of the case. A
find that the king, by the advice and assent of the l
sidering that Richard Fitzalan, etc., was seized of the
our, and lordship in fee, and by reason of his possess
without any other reason or creation, was Earl of A
held the name, style, and honour of Earl of Arunc
place and seat of Earl of Arundel in Parliament and
the king," etc., admits him to the same seat and
ancestors, Earls of Arundel, had held. This was lon
confirmed by act of Parliament (3 Car. I), reciting th
Earl of Arundel to be real and local, etc., and settl
on certain persons in tail, with provisions against a
the castle and honour. This appears to establish
barony in Arundel, as a recent determination had do
gavenny. Arundel was a very peculiar instance of
by tenure. For we can not doubt that all earls w
Parliament by virtue of that rank, though, in fact,
tensive lands of the crown. But in 1669 a new doc
probably had long been floating among lawyers and i
of Lords, was laid down by the king in council or
the title of Fitzwalter. The nature of a barony by te
been discussed, it was found "to have been disc
many ages, and not in being" (a proposition not v
if we look at the Abergavenny case, even setting a
Arundel as peculiar in its character, and as settled
"and so not fit to be received, or to admit any prete
to succession thereto." It is fair to observe that so
judges were present on this occasion. The committe
that "this decision" (which, after all, was not in th
Lords) "may perhaps be considered as amounting
opinion that, although in early times the right to a
mons to Parliament as a baron may have been founde
a contrary practice had prevailed for ages, and tha
it was not to be taken as then forming part of the c
law of the land" (p. 446). Thus ended barony by t
final decision, for such it has been considered, an
tempts to revive the ancient doctrine have been d
prevented many tedious investigations of claims to
scent, and of alienations in times long past. For it
pretended that every fraction of a barony gave a ri
mons; and, on the other hand, alienations of parcels,
to coparceners, must have been common, and someti

to disprove. It was held, indeed, by some that the caput baroniæ, or principal lordship, contained, as it were, the vital principle of the peerage, and that its owner was the true baron; but this assumption seems uncertain.

It is not very easy to reconcile this peremptory denial of peerage by tenure with the proviso in the recent statute taking away tenure by knight-service, and, inasmuch as it converts all tenure into socage, that also by barony, "that this act shall not infringe or hurt any title of honour, feudal or other, by which any person hath or may have right to sit in the lords' House of Parliament, as to his or their title of honour, or sitting in Parliament, and the privilege belonging to them as peers." (Stat. 12, Car. II, c. 24, s. 11.)

Surely this clause was designed to preserve the incident to baronial tenure, the privilege of being summoned to Parliament, while it destroyed its original root, the tenure itself. The privy council, in their decision on the Fitzwalter claim, did not allude to this statute, probably on account of the above proviso, and seem to argue that, if tenure by barony was no longer in being, the privilege attached to it must have been extinguished also. It is, however, observable that tenure by barony is not taken away by the statute, except by implication. No act, indeed, can be more loosely drawn than this, which was to change essentially the condition of landed property throughout the kingdom. It literally abolishes all tenure in capite; though this is the basis of the crown's right to escheat, and though lands in common socage, which the act with a strange confusion opposes to socage in capite, were as much holden of the king or other lord as those by knight-service. Whether it was intended by the silence about tenure by barony to pass it over as obsolete, or this arose from negligence alone, it can not be doubted that the proviso preserving the right of sitting in Parliament by a feudal honour was introduced in order to save that privilege, as well for Arundel and Abergavenny as for any other that might be entitled to it.[11]

X, page 682.—The equitable jurisdiction of the Court of Chancery has been lately traced, in some respects, though not

[11] The continuance of barony by tenure has been controverted by Sir Harris Nicolas, in some remarks on such a claim preferred by the present Earl Fitzharding while yet a commoner, in virtue of the possession of Berkeley Castle, published as an appendix to his "Report of the L'Isle Peerage." In the particular case there seem to have been several difficulties, independently of the great one, that, in the reign of Charles II, barony by tenure had been finally condemned. But there is surely a great general difficulty on the opposite side, in the hypothesis that, while it is acknowledged that there were, in the reigns of Edward I and Edward II, certain known persons holding by barony and called peers of the realm, it could have been agreeable to the feudal or to the English constitution that the king, by refusing to the posterity of such barons a writ of summons to Parliament, might deprive them of their nobility, and reduce them forever to the rank of commoners.

Veniant partes coram cancellario, et ostendat ei Adam quare ipsos ejecit, et fiat iis justitia." Another is a petition concerning concealment of dower, for which, perhaps, there was no legal remedy.

In the reign of Edward II the peculiar jurisdiction of the chancellor was still more distinctly marked. "From petitions and answers lately discovered, it appears that during this reign the jurisdiction of the Court of Chancery was considérably extended, as the 'consuetudo cancellariæ' is often familiarly mentioned. We find petitions referred to the chancellor in his court, either separately, or in conjunction with the king's justices, or the king's sergeants; on disputes respecting the wardship of infants, partition, dower, rent charges, tithes, and goods of felons. The chancellor was in full possession of his jurisdiction over charities, and he superintended the conduct of coroners. Mere wrongs, such as malicious prosecutions and trespasses to personal property, are sometimes the subject of proceedings before him; but I apprehend that those were cases where, from powerful combinations and confederacies, redress could not be obtained in the courts of common law." ("Lives of Chancellors," vol. i, p. 204.)

Lord Campbell, still with materials furnished by Mr. Hardy, has given not less than thirty-eight entries during the reign of Edward II, where the petition, though sometimes directed to the council, is referred to the chancellor for determination. One only of these, so far as we can judge from their very brief expression, implies anything of an equitable jurisdiction. It is again a case of dower, and the claimant is remitted to the Chancery; "et fiat sibi ibidem justitia, quia non potest juvari per communem legem per breve de dote." This case is in the rolls of Parliament (i, 340), and had been previously mentioned by Mr. Bruce in a learned memoir on the Court of Star Chamber. ("Archæologia," xxv, 345.) It is difficult to say whether this fell within the modern rules of equity, but the general principle is evidently the same.

Another petition is from the commonalty of Suffolk to the council, complaining of false indictments and presentments in courts-leet. It is answered: "Si quis sequi-voluerit adversus falsos indicatores et procuratores de falsis indictamentis, sequatur in Cancell. et habebit remedium consequens." Several other entries in this list are illustrative of the jurisdiction appertaining, in fact at least, to the council and the chancellor; and being of so early a reign form a valuable accession to those which later records have furnished to Sir Matthew Hale and others.

The Court of Chancery began to decide causes as a court of equity, according to Mr. Hardy, in the reign of Edward III, probably about 22 Edward III. (Introduction to "Close Rolls," p. 28.) Lord Campbell would carry this jurisdiction higher, and

the instances already mentioned may be sufficient j
that it had begun to exist. It certainly seems no ur
position that the great principle of doing justice, b
council and the chancellor professed to guide thei
judicature, may have led them to grant relief in sc
numerous instances where the common law was de
rules too technical and unbending. But, as has be
the actual entries, as far as quoted, do not afford
dents of equity. Mr. Hardy, indeed, suggests (p.
Curia Regis in the Norman period proceeded on eq
ciples; and that this led to the removal of plaints int
county court. This is, perhaps, not what we sho
presume. The subtle and technical spirit of the Nor
is precisely that which leads, in legal procedure, to
unbending rules; while in the lower courts, where
thanes had ever judged by the broad rules of justic
to the circumstances of the case, rather than a stric
which did not yet exist, we might expect to find a
tainty and inconsistency which belongs to a syste
until, as in England, it has acquired by length of t
formity of law, but none at least of the technicality
istic of our Norman common law, and by which the
of judicial proceedings was so continually defeated.
fore, does not seem to me a probable cause of th
suits from the county court or court-baron to thc
minster. The true reason, as I have observed in a
was the partiality of these local tribunals. And th
trying a suit before the justices in eyre might not b
greater than in the county court.

I conceive, therefore, that the three supreme co
minster proceeded upon those rules of strict law wh
chiefly themselves established; and this from the
separation from the original Curia Regis. But whetl
council may have given more extensive remedies tl
mon law afforded, as early at least as the reign of
what we are not competent apparently to affirm o
are at present only concerned with the Court of Ch
it will be interesting to quote the deliberate opin
distinguished writer, who has taken a different vie
ject from any of his predecessors.

"After much deliberation," says Lord Campb
express my clear conviction that the chancellor's e
diction is as indubitable and as ancient as his comn
diction, and that it may be traced in a manner eq
tory. The silence of Bracton, Glanvil, Fleta, an
juridical writers has been strongly relied upon to

equitable jurisdiction of the chancellor; but they as little notice his common-law jurisdiction, most of them writing during the subsistence of the Aula Regia; and they all speak of the Chancery not as a court, but merely as an office for the making and sealing of writs. There are no very early decisions of the chancellors on points of law any more than of equity to be found in the year-books or old abridgments. . . . By 'equitable jurisdiction' must be understood the extraordinary interference of the chancellor, without common-law process or regard to the common-law rules of proceeding, upon the petition of a party grieved who was without adequate remedy in a court of common law; whereupon the opposite party was compelled to appear and to be examined, either personally or upon written interrogatories: and evidence being heard on both sides, without the interposition of a jury, an order was made secundum æquum et bonum, which was enforced by imprisonment. Such a jurisdiction had belonged to the Aula Regia, and was long exercised by Parliament; and, when Parliament was not sitting, by the king's ordinary council. Upon the dissolution of the Aula Regia many petitions, which Parliament or the council could not conveniently dispose of, were referred to the chancellor, sometimes with and sometimes without assessors. To avoid the circuity of applying to Parliament or the council, the petition was very soon, in many instances, addressed originally to the chancellor himself." ("Lives of Chancellors," i, 7.)

In the latter part of Edward III's long reign this equitable jurisdiction had become, it is likely, of such frequent exercise, that we may consider the following brief summary by Lord Campbell as probable by analogy and substantially true, if not sustained in all respects by the evidence that has yet been brought to light: "The jurisdiction of the Court of Chancery was now established in all matters where its own officers were concerned, in petitions of right where an injury was alleged to be done to a subject by the king or his officers in relieving against judgments in courts of law (Lord Campbell gives two instances), and generally in cases of fraud, accident, and trust" (p. 291).

In the reign of Richard II the writ of subpœna was invented by John de Waltham, master of the rolls; and to this a great importance seems to have been attached at the time, as we may perceive by the frequent complaints of the commons in Parliament, and by the traditionary abhorrence in which the name of the inventor was held. "In reality," says Lord Campbell, "he first framed it in its present form when a clerk in Chancery in the latter end of the reign of Edward III; but the invention consisted in merely adding to the old clause, Quibusdam certis de

causis, the words, 'Et hoc subpœna centum librarum omittas'; and I am at a loss to conceive how such i was attached to it, or how it was supposed to have bro so complete a revolution in equitable proceedings, for t was never enforced; and if the party failed to appear, was treated, according to the practice prevailing in our as a contempt of court, and made the foundation of c process" (p. 296).

The commons in Parliament, whose sensitiveness grievances was by no means accompanied by an equ in devising remedies, had, probably without intention, hanced the power of the chancellor by a cause in act passed in the thirty-sixth year of Edward III, tha man that feeleth himself aggrieved contrary to any of above written, or others contained in divers statutes, into the Chancery, or any for him, and thereof mak plaint, he shall presently there have remedy by force articles or statutes, without elsewhere pursuing to hav Yet nothing could be more obvious than that the bre statute was cognizable before the courts of law. An chief of permitting men to be sued vexatiously before cellor becoming felt, a statute was enacted, thirty ye after this time (17 Richard II, c. 6), analogous altogeth in the late reign respecting the jurisdiction of the cour reciting that "people be compelled to come before council, or in the Chancery by writs grounded on u gestions," provided that "the chancellor for the time b ently after that such suggestions be duly found and t true, shall have power to ordain and award damages, to his discretion, to him which is so troubled undul said." "This remedy," Lord Campbell justly remarl was referred to the discretion of the chancellor him jurisdiction was to be controlled, proved, as might b wholly ineffectual; but it was used as a parliamentary r of his jurisdiction, and a pretence for refusing to est other check on it" (p. 247).

A few years before this statute the commons had (13 Richard II, "Rot. Parl.," iii, 269) that the chanc make no order against the common law, and that no appear before the chancellor where remedy was given b mon law. "This carries with it an admission," as L bell observes, "that a power of jurisdiction did res chancellor, so long as he did not determine against th law, nor interfere where the common law furnished The king's answer, "That it should continue as the been heretofore," clearly demonstrates that such an

restrained within due bounds, was recognised by the constitution of the country" (p. 305).

The act of 17 Richard II seems to have produced a greater regularity in the proceedings of the court, and put an end to such hasty interference, on perhaps verbal suggestions, as had given rise to this remedial provision. From the very year in which the statute was enacted we find bills in Chancery, and the answers to them, regularly filed; the grounds of demanding relief appear, and the chancellor renders himself in every instance responsible for the orders he has issued, by thus showing that they came within his jurisdiction. There are certainly many among the earlier bills in Chancery, which, according to the statute law and the great principle that they were determinable in other courts, could not have been heard; but we are unable to pronounce how far the allegation usually contained or implied, that justice could not be had elsewhere, was founded on the real circumstances. A calendar of these early proceedings (in abstract) is printed in the introduction to the first volume of the "Calendar of Chancery Proceedings in the Reign of Elizabeth," and may also be found in Cooper's "Public Records," i, 356.

The struggle, however, in behalf of the common law was not at an end. It is more than probable that the petitions against encroachments of Chancery, which fill the rolls under Henry IV, Henry V, and in the minority of Henry VI, emanated from that numerous and jealous body whose interests as well as prejudices were so deeply affected. Certain it is that the commons, though now acknowledging an equitable jurisdiction, or rather one more extensive than is understood by the word "equitable," in the greatest judicial officer of the crown, did not cease to remonstrate against his transgression of these boundaries. They succeeded so far, in 1436, as to obtain a statute (15 Henry VI, c. 4) in these words: "For that divers persons have before this time been greatly vexed and grieved by writs of subpœna, purchased for matters determinable by the common law of this land, to the great damage of such persons so vexed, in suspension and impediment of the common law as aforesaid; Our lord the king doth command that the statutes thereof made shall be duly observed, according to the form and effect of the same, and that no writ of subpœna be granted from henceforth until surety be found to satisfy the party so grieved and vexed for his damages and expenses, if so be that the matter can not be made good which is contained in the bill." It was the intention of the commons, as appears by the preamble of this statute and more fully by their petition in "Rot. Parl." (iv, 101), that the matters contained in the bill on which the subpœna was issued should be not only true in themselves, but such as could not be deter-

mined at common law. But the king's answer ap
equivocal.

The principle seems nevertheless to have been gen
lished, about the reign of Henry VI, that the Court
exercises merely a remedial jurisdiction, not indeed
by courts of law, unless possibly in such circumsta
not be expected, but bound by its general responsib
serve the limits which ancient usage and innumerabl
have imposed. It was at the end of this reign, and n
Richard II, according to the writer so often quoted, t
enhancement of the chancellor's authority, by bri
ments to uses within it, opened a new era in the hi
law. And this the judges brought on themselves b
row adherence to technical notions. They now begar
this; and those of Edward IV, as Lord Campbell we
"very bold men," having repealed the statute de do
own authority in Taltarum's case—a stretch of ju
beyond any that the Court of Chancery had ventured
were also exceedingly jealous of that court; and i
reported in the year-books (22 Edward IV, 37), adv
to disobey an injunction from the Court of Chan
him that, if the chancellor committed him to the Fleet,
discharge the prisoner by habeas corpus. (Lord C
394.) The case seems to have been one where, in m
no injunction would have been granted, the courts
competent to apply a remedy.

XI, page 684.—This intricate subject has been
since the first publication of these volumes, in an "
the Original Authority of the King's Council," by
Palgrave (1834), written with remarkable perspicui
dom from diffusiveness. But I do not yet assent to t
of the author as to the legality of proceedings before
which I have represented as unconstitutional, and wh
it was the object of Parliament to restrain.

"It seems," he says, "that in the reign of He
council was considered as a court of peers within t
Magna Charta; and before which, as a court of or
diction, the rights of tenants holding in capite or by
to be discussed and decided, and it unquestionably
direct jurisdiction over all the king's subjects" (p. 34
volume of "Close Rolls," published by Mr. Hardy
Palgrave's essay, contains no instances of jurisdicti
by the council in the reign of John. But they begin
afterward, in the minority of Henry III; so that
only the fullest evidence that the council took on itse

jurisdiction in matters of law at that time, but that it had not done so before: for the "Close Rolls" of John are so full as to render the negative argument satisfactory. It will, of course, be understood that I take the facts on the authority of Mr. Hardy (introduction to "Close Rolls," vol. ii), whose diligence and accuracy are indisputable. Thus this exercise of judicial power began immediately after the Great Charter. And yet, if it is to be reconciled with the twenty-ninth section, it is difficult to perceive in what manner that celebrated provision for personal liberty against the crown, which has always been accounted the most precious jewel in the whole coronet, the most valuable stipulation made at Runnymede, and the most enduring to later times, could merit the fondness with which it has been regarded. "Non super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terræ." If it is alleged that the jurisdiction of the king's council was the law of the land, the whole security falls to the ground and leaves the grievance as it stood, unredressed. Could the judgment of the council have been reckoned, as Sir F. Palgrave supposes, a "judicium parium suorum," except perhaps in the case of tenants in chief? The word is commonly understood of that trial per pais which, in one form or another, is of immemorial antiquity in our social institutions.

"Though this jurisdiction," he proceeds, "was more frequently called into action when Parliament was sitting, still it was no less inherent in the council at all other times; and until the middle of the reign of Edward III no exception had ever been taken to the form of its proceedings." He subjoins, indeed, in a note: "Unless the statute of 5 Edward III, c. 9, may be considered as an earlier testimony against the authority of the council. This, however, is by no means clear, and there is no corresponding petition in the Parliament roll from which any further information could be obtained" (p. 34).

The irresistible conclusion from this passage is, that we have been wholly mistaken in supposing the commons under Edward III and his successors to have resisted an illegal encroachment of power in the king's ordinary council, while it had in truth been exercising an ancient jurisdiction, never restrained by law and never complained of by the subject. This would reverse our constitutional theory to no small degree, and affect so much the spirit of my own pages, that I can not suffer it to pass, coming on an authority so respectable, without some comment. But why is it asserted that this jurisdiction was inherent in the council? Why are we to interpret Magna Charta otherwise than according to the natural meaning of the words and the concurrent voice of Parliament? The silence of the commons in Parliament under Edward II as to this grievance will hardly prove that it was not

felt, when we consider how few petitions of a pul during that reign, are on the rolls. But it may be ac they were not so strenuous in demanding redress, b were of comparatively recent origin as an estate of as they became in the next long reign, the most imp haps, in our early constitutional history.

It is doubted by Sir F. Palgrave whether the s Edward III, c. 9, can be considered as a testimony authority of the council. It is, however, very natural pret it, when we look at the subsequent statutes and the commons, directed for more than a century t object. "No man shall be taken," says Lord Co 46), "that is, restrained of liberty, by petition or su the king or to his council, unless it be by indictment ment of good and lawful men, where such deeds be branch and divers other parts of this act have been plained by divers acts of Parliament, etc., quoted in th He then gives the titles of six statutes, the first b 5 Edward III, c. 9. But let us suppose that the pet commons in 25 Edward III demanded an innovatio it certainly did in long-established usage. And let us is justly pointed out by Sir F. Palgrave, that the kin swer to their petition is not commensurate to its requ serves, though it is not quite easy to see what, som extraordinary jurisdiction.[18] Still the statute itself, a similar petition in a subsequent Parliament, is e "none shall be taken by petition or suggestion to the council, unless it be by indictment or presentment" (i charge), "or by writ original at the common law" suit), "nor shall be put out of his franchise of freel he have been duly put to answer, and forejudged of t due course of law."

Lord Hale has quoted a remarkable passage fr book, not long after these statutes of 25 Edward Edward III, which, if Sir F. Palgrave had not ove would have found not very favourable to his high nc

[18] The words of the petition and answer are the following:

"Item, que nul franc homme ne soit mys a respondre de son franc tenement, ne de riens qui touche vie et membre, fyns ou redemptions, par apposailles devant le conseil notre seigneur le roi, ne devant ses ministres queconques, sinoun par proces de ley de ces en arere use."

"Il plest a notre seigneur le roi que les leies de son roialme soient tenuz et gardez en lour force, et que nul homme soit tenu a respondre de son fraunk tenement, sinoun par processe de ley: mes de chose que touche vie ou membre, contemptz ou excesse, soit fa use ces en arere." ("Rol

It is not easy to percei served by the words "ch vie ou membre;" for th determined these. Possi accusations of treason o they might entertain a though they would ultir by a jury. Contempts ar stood; and by excesses w and seditions. These pc which could not be alw in a lower court, it was tention of the governmen the council.

king's prerogative in council. "In after ages," says Hale, "the constant opinion and practice was to disallow any reversals of judgment by the council, which appears by the notable case in year-book, 39 Edward III, 14." ("Jurisdiction of Lords' House," p. 41.) It is indeed a notable case, wherein the chancellor before the council reverses a judgment of a court of law. "Mes les justices ne pristoient nul regard al reverser devant le council, par ceo que ce ne fust place ou jugement purroit estre reverse." If the council could not exercise this jurisdiction on appeal, which is not perhaps expressly taken away by any statute, much less against the language of so many statutes could they lawfully entertain any original suit. Such, however, were the vacillations of a motley assembly, so steady the perseverance of government in retaining its power, so indefinite the limits of ancient usage, so loose the phrases of remedial statutes, passing sometimes by their generality the intentions of those who enacted them, so useful, we may add, and almost indispensable, was a portion of those prerogatives which the crown exercised through the council and chancery, that we find soon afterward a statute (37 Edward III, c. 18), which recognises in some measure those irregular proceedings before the council, by providing only that those who make suggestions to the chancellor and great council, by which men are put in danger against the form of the charter, shall give security for proving them. This is rendered more remedial by another act next year (38 Edward III, c. 9), which, however, leaves the liberty of making such suggestions untouched. The truth is, that the act of 25 Edward III went to annihilate the legal and equitable jurisdiction of the Court of Chancery—the former of which had been long exercised, and the latter was beginning to spring up. But the 42 Edward III, c. 3, which seems to go as far as the former in the enacting words, will be found, according to the preamble, to regard only criminal charges.

Sir Francis Palgrave maintains that the council never intermitted its authority, but, on the contrary, "it continually assumed more consistency and order. It is probable that the long absences of Henry V from England invested this body with a greater degree of importance. After every minority and after every appointment of a select or extraordinary council by authority of the legislature, we find that the ordinary council acquired a fresh impulse and further powers. Hence the next reign constitutes a new era" (p. 80). He proceeds to give the same passage which I have quoted from "Rot. Parl.," 8 Henry VI, vol. v, p. 343, as well as one in an earlier Parliament (2 Henry VI, p. 28). But I had neglected to state the whole case where I mention the articles settled in Parliament for the regulation of the council. In the first place, this was not the king's ordinary council, but one

specially appointed by the lords in Parliament for ment of the realm during his minority. They cons tain lords spiritual and temporal, the chancellor, th and a few commoners. These commissioners delivere of provisions " for the good and the governance of the the lords that be of the king's council desireth " (p. 2 not explicitly appear that the commons assented to visions; but it may be presumed, at least in a legal se being present and by the schedule being delivered ment, " baillez en meme le Parlement." But in the S where the same provision as to the jurisdiction of t dinary council is repeated, the articles are said, aft proved by the lords spiritual and temporal, to hav " coram domino rege in eodem Parliamento, in pre regni statuum " (p. 343). It is always held that what declared to be done in presence of all the estates Parliament.

We find, therefore, a recognition of the principl always been alleged in defence of the ordinary co parliamentary confirmation—the principle that bre law, which the law could not, through the weakness isters, or corruption, or partiality, sufficiently repr reserved for the strong arm of royal authority. " Sir Francis Palgrave, " did the council settle and de ciples and practice. A new tribunal was erected, an obtained a virtual supremacy over the common la ception reserved to their ' discretion ' of interfering wl lordships felt too much might on one side, and too m on the other, was of itself sufficient to embrace almo pute or trial " (p. 81).

But, in the first place, this latitude of construct by any means what the Parliament meant to allow it be taken, except by wilfully usurping powers nev and, secondly, it was not the ordinary council whi constituted during the king's minority; nor did the intrusted to persons so specially named in Parliame the regular officers of the crown. The restraining s suspended for a time in favour of a new tribunal. already observed that there was always a class of ca of the same kind as those mentioned in the act tribunal, tacitly excluded from the operation of th wherein the coercive jurisdiction of the king's ordi had great convenience—namely, where the course o obstructed by riots, combinations of maintenance, c influence. And there is no doubt that, down to th tion of the Court of Star Chamber (which was no ot

consilium ordinarium under a different name), these offences were cognizable in it, without the regular forms of the common law.[14]

"From the reign of Edward IV we do not trace any further opposition to the authority either of the chancery or of the council. These courts had become ingrafted on the constitution; and if they excited fear or jealousy, there was no one who dared to complain. Yet additional parliamentary sanction was not considered as unnecessary by Henry VII, and in the third year of his reign an act was passed for giving the Court of Star Chamber, which had now acquired its determinate name, further authority to punish divers misdemeanours." (Palgrave, p. 97.)

It is really more than we can grant that the jurisdiction of the consilium ordinarium had been ingrafted on the constitution, when the statute-book was full of laws to restrain, if not to abrogate it. The acts already mentioned, in the reign of Henry VI, by granting a temporary and limited jurisdiction to the council, demonstrate that its general exercise was not acknowledged by Parliament. We can only say that it may have continued without remonstrance in the reign of Edward IV. I have observed in the text that the rolls of Parliament under Edward IV contain no complaints of grievances. But it is not quite manifest that the council did exercise in that reign as much jurisdiction as it had once done. Lord Hale tells us that "this jurisdiction was gradually brought into great disuse, though there remain some straggling footsteps of their proceedings till near 3 Henry VII." ("Hist. of Lords' Jurisdiction," p. 38.) And the famous statute in that year, which erected a new court, sometimes improperly called the Court of Star Chamber, seems to have been prompted by a desire to restore, in a new and more legal form, a jurisdiction which was become almost obsolete, and, being in contradiction to acts of Parliament, could not well be rendered effective without one.[15]

We can not but discover, throughout the learned and luminous "Essay on the Authority of the King's Council," a strong tendency to represent its exercise as both constitutional and salutary. The former epithet can not, I think, be possibly applicable in the face of statute law; for what else determines our constitution? But it is a problem with some, whether the powers actually exerted by this anomalous court, admitting them to have been, at least latterly, in contravention of many statutes, may not have been rendered necessary by the disorderly condition of society and the comparative impotence of the common law. This can not easily be solved with the defective knowledge that we possess. Sometimes, no doubt, the "might on one side, and unmight

[14] See Note on p. 685, for the statute 31 Henry VI, c. 2.
[15] See "Constitutional History of England," vol. i, p. 49 (1842).

on the other," as the answer to a petition forcibly
afforded a justification which, practically at least,
themselves were content to allow. But were thes
instances so frequent as not to leave a much gr
wherein the legal remedy by suit before the king
assize might have been perfectly effectual? For we
cerned with the old county courts, which were perl
ary and partial enough, but with the regular admin
and criminal, before the king's justices of Oyer a
and of jail delivery. Had not they, generally spe
reign of Edward III and his successors, such means
the execution of law as left no sufficient pretext for
an arbitrary tribunal? Liberty, we should remem
quire the sacrifice of some degree of security ag
wrong, which a despotic government, with an unli
of restraint, can alone supply. If no one were permi
on the high road without a license, or, as now so u
a passport, if no one could keep arms without a regi
one might be indefinitely detained on suspicion, tl
of society would be materially impeded, but at the e
certain degree, of every man's freedom and enjoyı
dom being but a means to the greatest good, times
when it must yield to the security of still higher bl
the immediate question is, whether such were the sta
in the fourteenth and fifteenth centuries. Now that it
and insecure, comparatively with our own times or
our fathers, is hardly to be disputed. But if it requir
trary government which the king's council were anxi
tain, the representatives of the commons in Parliam
and burgesses, not above the law, and much inter
conservation of property, must have complained ver
ably for more than a hundred years. They were aj
well able to judge as our writers can be; and if they
trial by jury at nisi prius more likely, on the whol
a just adjudication of a civil suit, than one before the g
of state and other constituent members of the ordin
it does not seem clear to me that we have a right t
contrary. This mode of trial by jury, as has been see
place, had acquired, by the beginning of the fifteenth
present form; and considering the great authority o
of assize, it may not, probably, have given very frequ
for complaint of partiality or corrupt influence.

XII, page 693.—The learned author of the "Inq
Rise and Growth of the Royal Prerogative in E
founded his historical theory on the confusion which

to have grown up between the ideal king of the constitution and the personal king on the throne. By the former he means the personification of abstract principles, sovereign power, and absolute justice, which the law attributes to the genus king, but which flattery or other motives have transferred to the possessor of the crown for the time being, and have thus changed the Teutonic cyning, the first man of the commonwealth, the man of the highest weregild, the man who was so much responsible that he might be sued for damages in his own courts or deposed for misgovernment, into the sole irresponsible person of indefeasible prerogatives, of attributes almost divine, whom Bracton and a long series of subsequent lawyers raised up to a height far beyond the theory of our early constitution.

This is supported with great acuteness and learning; nor is it possible to deny that the King of England, as the law-books represent him, is considerably different from what we generally conceive an ancient German chieftain to have been. Yet I doubt whether Mr. Allen has not laid too much stress on this, and given to the fictions of law a greater influence than they possessed in those times to which his inquiry relates; and whether, also, what he calls the monarchical theory was so much derived from foreign sources as he apprehends. We have no occasion to seek, in the systems of civilians or the dogmas of churchmen, what arose from a deep-seated principle of human nature. A king is a person; to persons alone we attach the attributes of power and wisdom; on persons we bestow our affection or our ill will. An abstraction, a politic idea of royalty, is convenient for lawyers; it suits the speculative reasoner, but it never can become so familiar to a people, especially one too rude to have listened to such reasoners, as the simple image of the king, the one man whom we are to love and to fear. The other idea is a sort of monarchical pantheism, of which the vanishing point is a republic. And to this the prevalent theory, that kings are to reign but not to govern, can not but lead. It is a plausible, and in the main, perhaps, for the times we have reached, a necessary theory; but it renders monarchy ultimately scarcely possible. And it was neither the sentiment of the Anglo-Saxons, nor of the Norman baronage; the feudal relation was essentially and exclusively personal; and if we had not enough, in a more universal feeling of human nature, to account for loyalty, we could not mistake its inevitable connection with the fealty and homage of the vassal. The influence of Roman notions was not inconsiderable upon the Continent; but they never prevailed very much here; and though, after the close alliance between the Church and state established by the Reformation, the whole weight of the former was thrown into the scale of the crown, the mediæval clergy, as

I have observed in the text, were anything rather t
of despotic power.

It may be very true that, by considering the
a merely political institution, the scheme of pruden
confusion, and confer the minimum of personal au
reigning prince, the principle of his irresponsibilit
better maintained. But the question to which w
our eyes is not a political one; it relates to the pc
positive sentiments of the English nation in the me
And here I can not put a few necessary fictions gr
courts, such as, the king never dies, the king can
the king is everywhere, against the tenor of our
language, which implies an actual and active per
Allen acknowledges that the act against the Dis
Edward II, and reconfirmed after its repeal, for
the doctrine that allegiance had more regard to tl
to the person of the king, " seems to establish, as
opinion of the legislature, that allegiance is due to
the king generally, and not merely to his crown or p
so as to be released and destroyed by his misgove
kingdom " (p. 14); which, he adds, is not easily re
the deposition of Richard II. But that was ac
force, with whatever formalities it may have bee
pedient to surround it.

We can not, however, infer from the declaratio
lature, that allegiance is due to the king's person
politic capacity, any such consequence as that it
possible case, to be released by his misgovernme
surely not in the spirit of any Parliament under
Edward III; and it is precisely because allegiance
person that, upon either feudal or natural principl
cancelled by personal misconduct. A contrary
undoubtedly held under the Stuarts, but it was n
mediæval period.

The tenet of our law, that all the soil belongs t
the king, is undoubtedly an enormous fiction, an
nant to the barbaric theory preserved by the Sa
unappropriated land belonged to the folk, and w
without its consent.[16] It was, however, but an ex
feudal tenure to the whole kingdom, and rested on
of feudal homage. William established it more
than by any theory of lawyers; though doubtless
often found lawyers as ready to shape the acts o
theory as if they had originally projected them. A

[16] It has been mentioned in a former note, on Mr. Allen's authority, that the folcland had acquired ra regis before the c

up the high schemes of prerogative, which, for many centuries, were in conflict with those of liberty. We are not able, nevertheless, to define the constitutional authority of the Saxon kings; it was not legislative, nor was that of William and his successors ever such; it was not exclusive of redress for private wrong, nor was this ever the theory of English law, though the method of remedy might not be sufficiently effective; yet it had certainly grown before the conquest, with no help from Roman notions, to something very unlike that of the German kings in Tacitus.

XIII, page 706.—The reduction of the free ceorls into villenage, especially if as general as is usually assumed, is one of the most remarkable innovations during the Anglo-Norman period; and one which, as far as our published records extend, we can not wholly explain. Observations have been made on it by Mr. Wright, in the "Archæologia" (vol. xxx, p. 225). After adverting to the oppression of the peasants in Normandy, which produced several rebellions, he proceeds thus: "These feelings of hatred and contempt for the peasantry were brought into our island by the Norman barons in the latter half of the eleventh century. The Saxon laws and customs continued; but the Normans acted as the Franks had done toward the Roman coloni: they enforced with harshness the laws which were in their own favour, and gradually threw aside or broke through those which were in favour of the miserable serf."

In the "Laws of Henry I" we find the weregild of the twyhinder, or villein, set at two hundred shillings in Wessex, "quæ caput regni est et legum" (c. 70). But this expression argues an Anglo-Saxon source; and, in fact, so much in that treatise seems to be copied, without regard to the change of times, from old authorities, mixed up with provisions of a feudal or Norman character, that we hardly know how to distinguish what belongs to each period. It is far from improbable that villenage, in the sense the word afterward bore—that is, an absolutely servile tenure of lands, not only without legal rights over them, but with an incapacity of acquiring either immovable or movable property against the lord—may have made considerable strides before the reign of Henry II.[17] But unless light should be thrown on its history by the publication of more records, it seems almost impossible to determine the introduction of predial villenage more precisely than to say it does not appear in the laws of England

[17] A presumptive proof of this may be drawn from a chapter in the "Laws of Henry I," c. 81, where the penalty payable by a villein for certain petty offences is set at thirty pence; that of a cotset at fifteen; and of a theow at six. The passage is extremely obscure; and this proportion of the three classes of men is almost the only part that appears evident. The cotset, who is often mentioned in "Doomsday," may thus have been an inferior villein, nearly similar to what Glanvil and later law-books call such.

quire some ancient authority, which has not been given. II. The villein regardant might be severed from the manor, with or without land, and would then become a villein in gross. If he was sold as a domestic serf, he might, perhaps, be practically in a lower condition than before, but his legal state was the same. If he was aliened with lands, parcels of the manor, as in the case of its descent to coparceners who made partition, he would no longer be regardant, because that implied a prescriptive dependence on the lord, but would occupy the same tenements and be in exactly the same position as before. "Villein in gross," says Littleton, "is where a man is seised of a manor whereunto a villein is regardant, and granteth the same villein by deed to another; then he is a villein in gross, and not regardant." (Sect. 181.) III. The servitude of all villeins was so complete that we can not conceive degrees in it. No one could purchase lands or possess goods of his own; we do not find that any one, being strictly a villein, held by certain services; "he must have regard," says Coke, "to that which is commanded unto him; or, in the words of Bracton, 'a quo præstandum servitium incertum et indeterminatum, ubi scire non poterit vespere quod servitium fieri debet mane.'" (Co. Lit., 120, b.) How could a villein in gross be lower than this? It is true that the villein had one inestimable advantage over the American negro, that he was a freeman, except relatively to his lord; possibly he might be better protected against personal injury; but in his incapacity of acquiring secure property, or of refusing labour, he was just on the same footing. It may be conjectured that some villeins in gross were descended from the servi, of whom we find twenty-five thousand enumerated in "Doomsday." Littleton says: "If a man and his ancestors, whose heir he is, have been seised of a villein and of his ancestors, as of villeins in gross, time out of memory of man, these are villeins in gross." (Sect. 182.)

It has been often asserted that villeins in gross seem not to have been a numerous class, and it might not be easy to adduce distinct instances of them in the fourteenth and fifteenth centuries, though we should scarcely infer, from the pains Littleton takes to describe them, that none were left in his time. But some may be found in an earlier age. In the ninth of John, William sued Ralph the priest for granting away lands which he held to Canford priory. Ralph pleaded that they were his freehold. William replied that he held them in villenage, and that he (the plaintiff) had sold one of Ralph's sisters for four shillings. (Blomefield's "Norfolk," vol. iii, p. 860, 4to edition.) And Mr. Wright has found in Madox's "Formulare Anglicanum" not less than five instances of villeins sold with their family and chattels, but without land. ("Archæologia," xxx, 228.) Even where they were

sold along with land, unless it were a manor, they
been observed before, have been villeins in gross.
ever, been informed that in valuations under esche
records a separate value is never put upon villeins;
tion without the land was apparently not contem
cases concerning villeins in gross, it has been said,
year-books; but villenage of any kind does not fu
many; and in several I do not perceive, in consultir
that the party can be shown to have been rega
reasons why villeins in gross should have beco
less numerous was that they could, for the most
claimed by showing a written grant, or by prescrip
descent; so that, if the title-deed were lost, or the
proved, the villein became free.

Manumissions were often, no doubt, gratuitous;
the villein seems to have purchased his freedom.
in strictness, as Glanvil tells us, he could not "libe
suis denariis quærere," inasmuch as all he possesse
longed to the lord, it would have been thought a
insist on so extreme a right. In order, however,
deed more secure, it was usual to insert the name of a
as paying the consideration money for the enf
("Archæologia," xxx, 228.)

It appears not by any means improbable that re
payments, or other fixed liabilities, were often substi
of uncertain services for the benefit of the lord a
tenant. And when these had lasted a considerable
manor, the villenage of the latter, without any
would have expired by desuetude. But, perhaps, a
tenure on the court-roll, with a copy given to hi
operate of itself, in construction of law, as a manur
I do not pretend to determine.

XV, page 711.—The public history of Europe
ages inadequately represents the popular sentiment,
it is expressed too loudly to escape the regard of
sometimes on less important subjects. But when
below the surface, a sullen murmur of discontent
and we perceive that mankind was not more insensil
and sufferings than at present. Besides the various
of the people in several counties, and their complai
ment, after the commons obtained a representatio
conclusive insight into the spirit of the times by
poetry. Two very interesting collections of this ki
lately published by the Camden Society, through
of Mr. Thomas Wright; one, the "Poems" attribu

Mapes; the other, the "Political Songs of England, from John to Edward II."

Mapes lived under Henry II, and has long been known as the reputed author of humorous Latin verses; but it seems much more probable that the far greater part of the collection lately printed is not from his hand. They may pass, not for the production of a single person, but rather of a class, during many years, or, in general words, a century, ending with the death of Henry III in 1272. Many of them are professedly written by an imaginary Golias.

"They are not the expressions of hostility of one man against an order of monks, but of the indignant patriotism of a considerable portion of the English nation against the encroachments of civil and ecclesiastical tyranny." (Introduction to "Poems" ascribed to Walter Mapes, p. 21.) The poems in this collection reflect almost entirely on the Pope and the higher clergy. They are all in rhyming Latin, and chiefly, though with exceptions, in the loose trochaic metre called Leonine. The authors, therefore, must have been clerks, actuated by the spirit which, in a church of great inequality in its endowments, and with a very numerous body of poor clergy, is apt to gain strength, but certainly, as ecclesiastical history bears witness, not one of mere envious malignity toward the prelates and the court of Rome. These deserved nothing better, in the thirteenth century, than biting satire and indignant reproof, and the poets were willing enough to bestow both.

But this popular poetry of the middle ages did not confine itself to the Church. In the collection entitled "Political Songs" we have some reflecting on Henry III, some on the general administration. The famous song on the battle of Lewes in 1264 is the earliest in English; but in the reign of Edward I several occur in that language. Others are in French or in Latin; one complaining of the taxes is in an odd mixture of these two languages; which, indeed, is not without other examples in mediæval poetry. These Latin songs could not, of course, have been generally understood. But what the priests sung in Latin, they said in English; the lower clergy fanned the flame, and gave utterance to what others felt. It may, perhaps, be remarked, as a proof of general sympathy with the democratic spirit which was then fermenting, that we have a song of exultation on the great defeat which Philip IV had just sustained at Courtrai, in 1302, by the burgesses of the Flemish cities, on whose liberties he had attempted to trample (p. 187). It is true that Edward I was on ill terms with France, but the political interests of the king would not, perhaps, have dictated the popular ballad.

It was an idle exaggeration in him who said that, if he could

make the ballads of a people, any one might mak
Ballads, like the press, and especially that portion
which bears most analogy to them, generally speaki
to a spirit which has been at work before. But t
doubt, an influence in rendering more determinat
more active, that resentment of wrong, that indigr
umphant oppression, that belief in the vices of the
too often for social peace and their own happiness,
by the poor. In comparison, indeed, with the efl
modern press, the power of ballads is trifling. Their li
liness, the humorous tone of their satire, even their n
sheathe the sting; and it is only in times when politi
is at its height that any considerable influence can b
them, and then it becomes undistinguishable from m
motives. Those which we read in the collection abo
appear to me rather the signs of popular discontent
calculated to enhance it. In that sense they are ver
and we can not but desire to see the promised contin
end of Richard II's reign.[19] They are said to have t
ward less frequent, though the wars of the Roses w
bring them forward.

Some of the political songs are written in Fra
relating to our Kings John and Henry III. Ded
we have two in Latin for the former reign; seven in
in French (or what the editor calls Anglo-Norm
really the same thing), one in a mixture of the two
English, for the reign of Henry III. In the reigns
and Edward II we have eight in Latin, three in Fr
English, and four in mixed languages; a style em
ably for amusement. It must be observed that a larg
of these songs contain panegyric and exultation on v
than satire; and that of the satire much is genera
falls on the Church; so that the animadversions on
the nobility are not very frequent, though with consi
ness; but this is more shown in the Latin than
poems.

[19] Mr. Wright has given a few specimens in "Essays on the Literature and Popular Superstition of England in the Middle Ages," vol. i, p. 257. In fact, we may reckon Piers Plow of popular satire, thoug the rest.

CHAPTER IX

I, page 748.—A rapid decline of learning began in the sixth century, of which Gregory of Tours is both a witness and an example. It is, therefore, properly one of the dark ages, more so by much than the eleventh, which concludes them; since very few were left in the Church who possessed any acquaintance with classical authors, or who wrote with any command of the Latin language. Their studies, whenever they studied at all, were almost exclusively theological; and this must be understood as to the subsequent centuries. By theological is meant the vulgate Scriptures and some of the Latin fathers; not, however, by reasoning upon them, or doing much more than introducing them as authority in their own words. In the seventh century, and still more at the beginning of the eighth, very little even of this remained in France, where we find hardly a name deserving of remembrance in a literary sense; but Isidore, and our own Bede, do honour to Spain and Britain.

It may certainly be said for France and Germany, notwithstanding a partial interruption in the latter part of the ninth and beginning of the tenth century, that they were gradually progressive from the time of Charlemagne. But then this progress was so very slow, and the men in front of it so little capable of bearing comparison with those of later times, considering their writings positively and without indulgence, that it is by no means unjust to call the centuries dark which elapsed between Charlemagne and the manifest revival of literary pursuits toward the end of the eleventh century. Alcuin, for example, has left us a good deal of poetry. This is superior to what we find in some other writers of the obscure period, and indicates both a correct ear and a familiarity with the Latin poets, especially Ovid. Still his verses are not as good as those which schoolboys of fourteen now produce, either in poetical power or in accuracy of language and metre. The errors, indeed, are innumerable. Aldhelm, an earlier Anglo-Saxon poet, with more imaginative spirit, is further removed from classical poetry. Lupus, Abbot of Ferrières, early in the ninth century, in some of his epistles writes tolerable Latin, though this is far from being always the case; he is smitten with a love of classical literature, quotes several poets and prose writers, and is almost as curious about little points of philology as an Italian scholar of the fifteenth century. He was continually borrowing books in order to transcribe them—a proof, however, of their scarcity and of the low condition of general learning, which is the chief point we have to regard.[1] But his more cele-

[1] The writings of Lupus Servatus, Abbot of Ferrières, were published by Baluze; and a good account of them will be found in Ampère's "Hist. Litt.,"

jority at least, I must call prejudice, has been directed of late years in an opposite direction. The mediæval period, in manners, in arts, in literature, and especially in religion, has been regarded with unwonted partiality; and this favourable temper has been extended to those ages which had lain most frequently under the ban of historical and literary censure.

A considerable impression has been made on the predisposed by the "Letters on the Dark Ages," which we owe to Dr. Maitland. Nor is this by any means surprising; both because the predisposed are soon convinced, and because the "Letters" are written with great ability, accurate learning, a spirited and lively pen, and consequently with a success in skirmishing warfare which many readily mistake for the gain of a pitched battle. Dr. Maitland is endowed with another quality, far more rare in historical controversy, especially of the ecclesiastical kind: I believe him to be of scrupulous integrity, minutely exact in all that he asserts; and, indeed, the wrath and asperity, which sometimes appear rather more than enough, are only called out by what he conceives to be wilful or slovenly misrepresentation. Had I, therefore, the leisure and means of following Dr. Maitland through his quotations, I should probably abstain from doing so from the reliance I should place on his testimony, both in regard to his power of discerning truth and his desire to express it. But I have no call for any examination could I institute it; since the result of my own reflections is that everything which Dr. Maitland asserts as matter of fact—I do not say suggests in all his language—may be perfectly true, without affecting the great proposition that the dark ages, those from the sixth to the eleventh, were ages of ignorance. Nor does he, as far as I collect, attempt to deny this evident truth; it is merely his object to prove that they were less ignorant, less dark, and in all points of view less worthy of condemnation than many suppose. I do not gainsay this position; being aware, as I have observed both in this and in another work, that the mere ignorance of these ages, striking as it is in comparison with earlier and later times, has been sometimes exaggerated; and that Europeans, and especially Christians, could not fall back into the absolute barbarism of the Esquimaux. But what a man of profound and accurate learning puts forward with limitations, sometimes expressed, and always present to his own mind, a heady and shallow retailer takes up, and exaggerates in conformity with his own prejudices.

The "Letters on the Dark Ages" relate principally to the theological attainment of the clergy during that period, which the author assumes, rather singularly, to extend from A. D. 800 to 1200; thus excluding midnight from his definition of darkness, and replacing it by the break of day. And in many respects,

then glimmered, and which she preserved through that darkness to rekindle the light of a happier age—*Σπέρμα πυρὸς σώζουσα* Meantime, what better apology than this ignorance can be made by Protestants, and I presume Dr. Maitland is not among these who abjure the name, for the corruption, the superstition, the tendency to usurpation, which they at least must impute to the Church of the dark ages? Not that in these respects it was worse than in a less obscure period, for the reverse is true; but the fabric of popery was raised upon its foundations before the eleventh century, though not displayed in its full proportions till afterward. And there was so much of lying legend, so much of fraud in the acquisition of property, that ecclesiastical historians have not been loath to acknowledge the general ignorance as a sort of excuse. [1848.]

II, page 797.—The account of domestic architecture given in the text is very superficial; but the subject still remains, comparatively with other portions of mediæval antiquity, but imperfectly treated. The best sketch that has hitherto been given is in an article with this title in the glossary of "Ancient Architecture" (which should be read in an edition not earlier than that of 1845), from the pen of Mr. Twopeny, whose attention has long been directed to the subject. "There is ample evidence yet remaining of the domestic architecture in this country during the twelfth century. The ordinary manor houses, and even houses of greater consideration, appear to have been generally built in the form of a parallelogram, two stories high,[2] the lower story vaulted, with no internal communication between the two, the upper story approached by a flight of steps on the outside; and in that story was sometimes the only fireplace in the whole building. It is more than probable that this was the usual style of houses in the preceding century." Instances of houses partly remaining are then given. We may add to those mentioned by Mr. Twopeny one, perhaps older than any, and better preserved than some, in his list. At Southampton is a Norman house, perhaps built in the first part of the twelfth century. It is nearly a square, the outer walls tolerably perfect; the principal rooms appear to have been on the first (or upper) floor; it has in this also

[2] This is rather equivocal, but it is certainly not meant that there were ever two floors above that on the ground. In the review of the "Chronicles of the Mayors and Sheriffs," published in the "Archæological Journal" (vol. iv, p. 273), we read, "The houses in London, of whatever material, seem never to have exceeded one story in height" (p. 282). But, soon afterward, "The ground floor of the London houses at this period was aptly enough called a cellar, the upper story a solar." It thus appears that the reviewer does not mean the same thing as Mr. Twopeny by the word story, which the former confines to the floor above that on the ground, while the latter includes both. The use of language, as we know, supports, in some measure, either meaning; but perhaps it is more correct, and more common, to call the first story that which is reached by a staircase from the ground floor. The solar, or sleeping-room, raised above the cellar, was often of wood.

more than we should expect in the times, as the paucity of apartments, so that both sexes, and that even in high rank, must have occupied the same room. The progress of a regard to decency in domestic architecture has been gradual, and in some respects has been increasing up to our own age. But the mediæval period shows little of it; though in the advance of wealth, a greater division of apartments distinguishes the houses of the fourteenth and fifteenth centuries from those of an earlier period.

The French houses of the twelfth and thirteenth centuries were probably much of the same arrangement as the English; the middle and lower classes had but one hall and one chamber; those superior to them had the solarium or upper floor, as with us. See "Archæological Journal" (vol. i, p. 212), where proofs are adduced from the fabliaux of Barbasan. [1848.]

III, page 877.—The Abbé de Sade, in those copious memoirs of the life of Petrarch, which illustrate in an agreeable though rather prolix manner the civil and literary history of Provence and Italy in the fourteenth century, endeavoured to establish his own descent from Laura, as the wife of Hughes de Sade, and born in the family De Noves. This hypothesis has since been received with general acquiescence by literary men; and Tiraboschi in particular, whose talent lay in these petty biographical researches, and who had a prejudice against everything that came from France, seems to consider it as decisively proved. But it has been called in question in a modern publication by the late Lord Woodhouselee. ("Essay on the Life and Character of Petrarch," 1810.) I shall not offer any opinion as to the identity of Petrarch's mistress with Laura de Sade; but the main position of Lord Woodhouselee's essay, that Laura was an unmarried woman, and the object of an honourable attachment in her lover, seems irreconcilable with the evidence that his writings supply. 1. There is no passage in Petrarch, whether of poetry or prose, that alludes to the virgin character of Laura, or gives her the usual appellations of unmarried women, puella in Latin, or donzella in Italian; even in the "Trionfo della Castità," where so obvious an opportunity occurred. Yet this was naturally to be expected from so ethereal an imagination as that of Petrarch, always inclined to invest her with the halo of celestial purity. We know how Milton took hold of the mystical notions of virginity—notions more congenial to the religion of Petrarch than his own:

> "Quod tibi perpetuus pudor, et sine labe juventas
> Pura fuit, quod nulla tori libata voluptas,
> En etiam tibi virginei servantur honores."
>
> "Epitaphium Damonis."

litis, ignotum est. PET. Invitus in laqueum offendi. Si quid tamen olim aliter forte voluissem, amor ætasque coëgerunt; nunc quid velim et cupiam scio, firmavique jam tandem animum labentem; contra autem illa propositi tenax et semper una permansit, quare constantiam fœmineam quò magis intelligo, magis admiror: idque sibi consilium fuisse, si unquam debuit, gaudeo nunc et gratias ago. AUG. Semel fallenti, non facile rursus fides habenda est: tu prius mores atque habitum, vitamque mutavisti, quàm animum mutâsse persuadeas; mitigatur forte si tuus leniturque ignis, extinctus non est. Tu verò qui tantum dilectioni tribuis, non animadvertis, illam absolvendo, quantam te ipse condemnas; illam fateri libet fuisse sanctissimam dum de insanum scelestumque fateare." ("De Contemptu Mundi," Dialog. 3, p. 367, edit. 1581.)

IV, page 881.—The progress of our language in proceedings of the legislature is so well described in the preface to the authentic edition of "Statutes of the Realm," published by the Record Commission, that I shall transcribe the passage, which I copy from Mr. Cooper's useful account of the "Public Records" (vol. i, p. 189):

"The earliest instance recorded of the use of the English language in any parliamentary proceeding is in 36 Edward III. The style of the roll of that year is in French as usual, but it is expressly stated that the causes of summoning the Parliament were declared en Englois; and the like circumstance is noted in 37 and 38 Edward III.[4] In the fifth year of Richard II, the chancellor is stated to have made un bone collacion en Engleys (introductory, as was then sometimes the usage, to the commencement of business), though he made use of the common French form for opening the Parliament. A petition from the 'Folk of the Mercerye of London,' in the tenth year of the same reign, is in English; and it appears also that in the seventeenth year the Earl of Arundel asked pardon of the Duke of Lancaster by the award of the king and lords, in their presence in Parliament, in a form of English words. The cession and renunciation of the crown by Richard II is stated to have been read before the estates of the realm and the people in Westminster Hall, first in Latin and afterward in English, but it is entered on the Parliament roll only in Latin. And the challenge of the crown by Henry IV, with his thanks after the allowance of his title, in the same assembly, are recorded in English, which is termed his maternal tongue. So also is the speech of Lord William Thyrning, the Chief Justice of the Common Pleas, to the late King Richard, announcing to him the sentence of his deposition, and the yielding up, on

[4] References are given to the Rolls of Parliament throughout this extract.

INDEX

Volume II begins with page 505

Abbassides, the, 392, 393.
Abbott of the people, office of, 257.
Abdahlrahman, 394.
Abélard, Peter, 852.
Achilles, character of, 831.
Acre, commerce of, 780.
Adalbert, Archbishop of Bremen, 353.
Adorno, Antoniotto, 258.
Adrian IV, 451.
Advocates of convents, office of, 413.
Æneas Sylvius, 406, note, 496, 497; quoted, 793, note.
Agathias, his history, 2, note.
Agincourt, battle of, 58.
Aglabites, the, 394.
Agnes, the Empress, 352.
Agriculture, 767, 804; by monks and colonies, 805; in England, 806; in France and Italy, 808.
Agutus, 274.
Alaric, defeat of, 3.
Albert I of Germany, 382.
Alberti, Benedetto, 246.
Albigeois, the. See Albigenses, the.
Albigenses, the, 22, 821, 824; Manicheism of, 821.
Albizi family, the, 242, 246, 247, 293 et seq.
Alcantara, order of, 308.
Alcuin, 852, 1114.
Aldermen, 516, 952, 1006.
Aldhelm, 1114.
Aldiones, 121, note.
Alessandria, founded, 197.
Alfonso V of Aragon, the Magnanimous, 288, 290, 291, 335.
Alfonso X, 310, 325.
Alfonso XI, 312.
Alfred, King, 507, 509, 514, 521, 749, note.
Al Gazel, 857, note.
Ali, quoted, 390.
Aljubarrota, battle of, 314.
Allemanni, the, 2,
Allen, Mr., quoted 1044 et passim.
Allodial estates, their conversion 964.
Alp Arslan, 397.
Amalfi, 186, 188, 7
Ammoniti, the, 24
Amurath II, Sulta
Amusements, 765.
Anastasius, Emper
Andrew of Hunga
Angevin kings, t house of.
Anglo-Saxon kin 508 et seq., 1000 in, 1017; instituti dinavian, 1023.
Anglo-Saxon kin 1024.
Anjou, house of, 5 286 et seq., 299.
Annates, tax calle
Anne, Lady Beau 76.
Anselm, Archbish
Antar, romance o
Antrustions, 91, 1
Antwerp, 773.
Anziani, the, 233.
Appanages, 68, 7
Apulia, Norman 188.
Aquinas, Thomas,
Aquitaine, 5, note
Arabia, at the ap hammed, 388.
Arabians, the, sci
Aragon, kingdom 304, 305, 332; it tile, 315, 347; note; spirit of Magna Charta of Union, 338;

Arbia, battle of, 270.
Architecture, domestic, 793, 1118; religious, 801; Gothic, 802.
Ardoin, King of Italy, 185.
Arian sect, the, 2; toleration of, 3.
Aristocracy, in France, 114, 966; subversion of feudal, 169. See also Nobility.
Aristotle, study of, 857, 859, 860.
Arles. See Burgundy.
Armagnac, constable of, 55.
Armour, 278.
Armorial bearings, adoption of, 115, 116, note.
Armorican republic, an, 895.
Army, first national standing, 66; earliest regular, 175, 176.
Arnold of Brescia, 228.
Arnulf, 350, note.
Arras, Treaty of, 63, 64, 70, 74.
Arrimani, the, of Lombardy, 969.
Arthur, King, romances concerning, 867.
Artillery, 280; effect of its use, 373.
Artisans, guilds and clubs of, 217; of German cities, 368. See also Guilds.
Arts, greater and lesser, of Florence, 233.
Arundel, Bishop, 623, 630.
Arundel, earldom of, 1091.
Asceticism, influence of, 737.
Aschaffenburg, concordat of, 496.
Assises of Jerusalem, the, 108, 158.
Atheling, title of, 1010.
Athens, Duke of, 238.
Attornment, 103.
Aucud, 274.
Aulic Council, the, 376.
Ausbürger, 370.
Austrasia, 4, 900, 906.
Austregues, 375.
Austria, 362, 366, 368, note.
Authorities consulted, 79, 181 et passim, notes,
Avites, 744, 745, note.
Azzo VII, of Ferrara, 204.

Bachelors, Knights, 118, 844.
Bacon, Roger, 862; his resemblance to Francis Bacon, 862, note.
Bail, a form of, 524.
Bajazet I, Sultan, 402, 403.
Bajazet II, 406.
Baldwin, King of Jerusalem, 30, notes.
Balearic Isles, the, 249, 309, 332.
Balia, the, 294.
Ballads, influence of, 1112.
Banks, 789.
Bannerets, 669, 844; of Rome, 231.
Banos di Toloso, battle at, 308.
Banrents, 670.
Barbiano, Alberic de, 275.
Barcelona, 782; Counts of, 8.
Barnstaple, 595.
Barons, rank of, 117, 669; by tenure, 1087, 1092.
Basileus, title of, 1004, 1010.
Basle, Council of, 379, 491.
Bathilda, St., 902.
Battles, decisive, 6, note.
Bechada, Gregory de, 863.
Becket, Thomas à, 451, 472, 547.
Bede, cited, 1000 et seq.
Bedford, the Duke of, 718.
Belgrade, relief of, 381.
Bella, Giano della, 236, 237.
Benedict XI, 480.
Benedict XII, 483.
Benedict XIII, 487.
Benedictine Bouquet, the, 15, note, 16, note, 20.
Benedictines, the, 805, note.
Benefices, 91, 113; hereditary, 114, 959; sale of, 438; in England, 464; appropriation of, 483, 485; appointments to, 497.
Benefit of clergy, 475, note, 495.
Benevento, 181, 186.
Benevolences, 729.
Bereford, Sir Simon, 666, note.
Berenger, reign of, 182.
Bianchi, the, 219; fanatics called, 756.
Bible, the, reading of, 825–827; translations of, 826; ignorance of, 1117.
Bigotry, 762.
Bishops, election of, 438, 985; confirmation of, 449; civil governors, 985; exactions of, 988; entitled to trial by the peers, 1062. See also Clergy.
Bithynia, 401.
Blackheath, riot at, 713.
Black Prince, the, 40, 47, 313, 838.
Blanche of Castile, 23, 25.
Boccaccio, 885, 888.
Boccanegra, Simon, 257.
Bocland, 525, 1044.
Boemond, 29.
Bohemia, 365, 377.
Bologna, 228; schools of, 848, 849, 855.

Boniface, St., 426, 909.
Boniface VIII, 476; arrest of, 479.
Boniface IX, 490.
Bonne of Savoy, 293.
Books, scarcity of, 749.
Bordarii, the, 1012, 1013.
Boroughs, 658 et seq.
Boson, Prince, 434.
Boulainvilliers, theory of, 1055.
Braccio di Montone, 281.
Bracton, quoted, 557, 850, note.
Brakelonde, Jocelyn de, "Chronicle" of, 1034, 1042.
Brancaleon, 229.
Brandenburg, 364, 365.
Bremen, 777.
Bretigni, Treaty of, 45–47, 49.
Bretwaldas, the, 1000.
Bridgenorth, siege of, 543.
Brienne, Walter de, 238.
Brito, Gulielmus, 883.
Britons, the, 512.
Brittany, duchy of, 76, 895.
Bruges, 773.
Brunehaut, 4, 5, note, 906, 908, 944, 957.
Brunetto Latini, 872, 875, notes.
Brunswick, house of, 356.
Buhle, M., 858, 860, notes.
Bulgarians, 821.
Bull, the Golden, 364, 365, 370, 375.
Buonuomini, 233.
Burgundians, the, 1; settlement of, in Gaul, 929, 930.
Burgundy, 4, 5, note, 14, note, 53 et seq., 70 et seq., 73.
Byzantine Empire, the, 387, 396. See also Eastern Empire.

Caballarii, 830, 831.
Cæsars, last of the, 404.
Caistor Castle, siege of, 702, note.
Calais, history of, 45, note; Treaty of, 46, 47.
Calatrava, order of, 308.
Calixtines, the, 379.
Cambridge, University of, 855, note.
Candia, 260.
Canossa, Henry IV at, 444.
Canute, King, 173, 508.
Capet, Hugh, 14, 17, 18; family of, 14, note; accession and dynasty of, 17–19, 915, 922.
Capua, 186, 188.
Caraccioli, 288, 289, note.
Carlovingian dynasty, the. See Charlemagne.
Carmagnola, 269.
Carrara family, the
Carroccio, the, 270.
Castile, 303 et seq.,
306; union of,
308; with Aragon
Castle, description
Castles of England
Castro family, the,
Castruccio Castruc
Catalonia, rebellio
principality of, 3
Catapan, office of,
Catharists, 821, 824.
Catullus, 877.
Cava, story of, 903.
Celibacy of the cle
Ceorls, 510, 511, 7
1011; mistakes c
reduction of, int
Cerda, Juan de, ju
gon, 343.
Châlons, battle of,
Chancellor, office
seq.
Chancery, court c
encroachments,
Chandos, Lord, 49
Charities, public,
Charlemagne, 7–11,
premacy over t
inability to writ
concerning, 868;
14, 20, note, 35
its fall, 910, 912
976.
Charles Martel, 5,
Charles the Bald,
Charles the Simpl
Charles IV of Fra
Charles V of Frar
Charles VI of Fra
Charles VII of Fr
Charles VIII of F
Charles of Anjou,
Charles the Bold
et seq.
Charles III, the
Charles IV of Ger
Charles the Bad,
Charters, city, 166
tion of the Cha
Charta.
Chatelains, 118.
Chatillon, Walter
Chaucer, Geoffrey
Childebert, 4.
Childeric III, dep
Chilperic, King o

Chimneys, first use of, 798.
Chioggia, storming of, 253; retaken, 255.
Chivalry, institution of, 829; generosity of knights, 838; decline of, 845; the successor to its spirit, 846.
Chrysoloras, Emanuel, 888.
Church, the Latin, separation of the Greek from, 422; relaxation of morals in, 435; acquisitions by, 475; constitution given by Boniface VIII, 478; great schism in, 486, 491; representation of, in Parliament, 573; almsgiving by, 759; dissent from, 819; tenants of, not bound to military service, 964; charge against, of ignorance, 1117. See also Clergy, Papacy, and Tithes.
Churls. See Ceorls.
Cid Ruy Diaz, the, 831; metrical life of, 870.
Ciompi, the, 244.
Cities, free, 166; maritime, 171; republics of Lombardy, 186; their government, 189 et seq., 192; struggle for independence, 194; loss of rights, 195; league of, 196; league of Tuscan, 202; factions in them, 204, 207, 211, 213, 220, 222; Castilian, 316; German free, 368; their prosperity, 793; government, 1075; Swiss, 382, 383; English, 585, 987; their representation in Parliament, 658; manufacturing, 773, 776; commercial, 779, 781; Italian, 779 et seq.; French and Spanish, 781, 782, 986, 987, 990; constitutions given by Rome, 980; advocates of, 981; popular institutions of, 986; of Flanders and Holland, 989.
Clarence, the Duke of, 728.
Clarendon, constitutions of, 1051.
Clement V, removal of, to Avignon, 480, 481.
Clement VII, election of, 486.
Clergy, the, relations of, with Charlemagne and Louis, 13; among the Franks, 84; under feudalism, 119; as legislators, 133, 135; in Lombard cities, 189, 190, notes; wealth and power of, 407 et seq., 419; celibacy of, 435; cathedral, 447; exemptions of, 471; taxation of, 477; of England after the conquest, 533; their learning, 542; the inferior, in Parliament, 673; ignorance among, 748; hunting by, 766.
Clergy, benefit of, 475, note, 495.
Clisson, the Constable de, 53.
Clodomir, 4.
Clotaire, 4.
Clotilda, 2.
Clovis, 2; conversion of, 2; victories of, 3; sons of, 4; called consul, 898; his army, 941: his authority, 951.
Cœur, Jacques, 797.
Cologne, 772.
Colonies, status of the, 970, 974.
Comines, Philip de, quoted, 75, 151.
Commendation, relation of, 95, 111, 963, 968.
Commerce, 770, 772, 775, 778.
Commodianus, quoted, 743, note.
Commoners, in England, 566.
Common Pleas, Court of, 560.
Commons, House of, 592, 600; title of speaker of, 616; progress of power of, 636; earliest use of English by, 641; introduction of bills in, 642; articles presented to the king, 644, 731; antiquity of, 1086; first recognition of constitutional power of, 1086.
Communion, use of the cup in, 379.
Comneni, the, 398.
Como, 193.
Compurgation, law of, 518, 1028, 1031.
Conan, King, 895.
Confirmation of the charters, 571.
Conflans, Treaty of, 68.
Conrad I of Germany, 351.
Conrad II, the Salic, famous edict of, 97, 102, 351.
Conrad III of Germany, 355.
Conrad IV of Germany, 210.
Conradin, execution of, 222.
"Consolato del Mare, Il," 784.
Constables, jurisdiction of, 689.
Constance, of Sicily and Naples, 222.
Constance, Council of, 378, 489, 493.
Constance, Treaty of, 198.
Constantine, gifts of, to the Church, 407; edicts of, 414.
Constantinople, taking of, 260; position of, 395; sieges of, 396, 399, 403, 404.
Consuls, 214, 255.
Contarini, the Doge, 254.
Convent, title of advocate to a, 382.

Convocation of Canterbury, the, 676.
Copyholders, 709.
Corporations, 774.
Corruption of blood, 105.
Corsica, 251, 790.
Cortes, the, 316, 345.
Corvinus, Matthias, 381.
Council, the king's, 679, 1055; the great, 609, 683; of Anglo-Saxon kings, 1026; of Norman, 1047; its jurisdiction, 1099.
Council of Ten, the, 265, 266.
Councils, ecclesiastical, 140; general, 490, 492, 497.
Count, the office of, 86; hereditary rights of a, 93.
Counties, in England, 514.
Courtesy, meaning of, in chivalry, 837.
Courtray, battle of, 35, 175.
Courts, earliest records of, existing, 1058; of king's bench, its beginning, 1058. See Justice, Jurisdiction, Chancery, Common Pleas, and Curia Regis.
Courts of Love, 864.
Crécy, battle of, 42, 43.
Crema, siege of, 195.
Crescentius, 184.
Crusades, the: the first, 26 et seq.; second, 30 et seq.; third, 31; the last two, 32; of Frederick II, 206; wealth brought to Italy by, 249, 398 et seq.; tax for, 467; against political enemies, 502, 754, 763; influence of, on chivalry, 832.
Curia, the, distinction between the Senate and, 984.
Curia Regis, 1055. 1068; threefold meaning of, 1059.
Curtilages, 768.
Customs on imports, 605.
Cyprian, 999.

D'Alcamo, Cuillo, 870.
Damascenus, John, 890, note.
Damoiseaux, 118.
Dandolo, Henry, 260.
Danegeld, 547, 1053.
Danes, the, incursion of, 16; in England, 507, 508; distinctions of rank among, 1009.
Dante, 218, note, 219, 232, 483; quoted, 791, 869; his life and poetry, 872.
Danube, the, plan to connect the Rhine with. 10.
Dark ages, the, 771, 1114; recent disposition to reverse the opinion of, 1115.
Dauphiné, acquired by France, 78.
Decurions, 980, 982.
Defensors of cities, duties of, 981, 985.
De la Mare, Peter, 614–616.
Demesne, 165, note.
Denina, 182, note.
De Than, Philip, 866.
Diamond, a famous, 73, note.
Diet, the, orders in, 369.
Diet of Worms, the, 372.
Digby, Kenelm, cited, 759. 847, notes.
Disaffection, a vigorous policy for, 198.
Disseizin, 701, 702; assize of novel, 1030.
Dissent, religious. See Schismatics and Heresy.
Divieto, the, 241.
Dogato, the, 267.
Doge of Venice, the, 260, 263; the last, 267, note.
Domain, 165, note.
Dominic, St., 459.
Donati, Corso, 237.
"Doomsday-Book," the, 510, note, 528, 535, 806, 1012; meaning of its name, 806, note, 1017: the Winton, 1019.
Doria family, the, 253, 256–258.
Duchies, tenure of, 352.
Duelling, 753.
Duke, office of, 86.
Dunstan, 421, 996, 998.
Durazzo, the Duke of, 285, note, 286.

Earl, or eorl, title of, 510, note, 1005 et seq.; two meanings of the word, 1006, 1007.
Eastern Empire, the. See Greek Empire.
Ebroin, 5, 904.
Eccelin da Romano, 208, 221, 223, 837.
Edgar, King, 508, 1024, 1025.
Edrisites, the. 394.
Edward the Elder, of England. 1004.
Edward the Confessor, 508; laws of, 548.
Edward I of England, 34, 476, 570, 601, 704, 716.
Edward II of England, 601, 627, 628, 1085.

Edward III of England, 603 et seq., 716, 774, 838, 840; his claim to the throne of France, 38.
Edward IV of England, 69, 727.
Edward, the Black Prince. See Black Prince.
Edwy, King, 421, 996.
Egbert, King of Wessex, 506.
Eginhard, 1115.
Eleanor of Guienne, 20.
Elections, contested, 463, 656.
Electors of Germany, the, 359, 366.
Elgiva, 996.
Eligious, St., quoted, 761.
Emperor, title of, 186, 911.
Emperors, right of popes to confirm elections of, 455.
England, constitutional history of, chapter viii, p. 505; claims of, in France, and wars to establish them, 34 et seq., 45, 48, 49, 64; relations of, with Rome, 421, 499; Anglo-Norman constitution of, 530; towns of, 539; under Norman kings, 543; source of its stability, 567; constitution of, 570, 691; revolution of, 635, 1399; effect of wars with France, 697; allegiance to the crown in, 699; insurrection of peasants in, 711, 713; manufactures of, 775; wealth, 777; commerce, 778; increase of luxury in, 791; first under a single sovereign, 1004; British inhabitants of, 1016; intermingling of Saxons and Normans, 1054; elective franchise in, 1073, See Parliament, Commons, and Lords.
English, the, estates of, after the conquest, 535.
English language, the, 878; employment of, in legislative proceedings, 1122.
Epila, battle of, 339.
Erigena, John, 750, 860, note.
Escuage, 101, 172, 546.
Estates of the realm, the three, 653.
Este, house of, 203, 225.
Ethelbald, 1002.
Ethelfleda, 510. 1004.
Eudes, or Eudon, 350, note, 905, 914.
Eugenius IV, deposition of, 492.
Euric, 3, note.
Exchequer, court of, 558, 1059.
Excommunication, 431.
Falconry, 675.
Falieri, Marino, 264.
False Decretals, the, 428, 449, 457.
Famines, 971.
Fanaticism, outbreaks of, 754 et seq.
Farinata degl' Uberti, 218.
Fatimites, the, 394.
Ferdinand of Aragon, 315, 347.
Ferdinand III of Castile, 308.
Ferdinand IV, the Summoned, 329.
Ferdinand I of Naples, 291.
Ferrara, 223.
Ferrier, Vincent, 334, note.
Feud, derivation of the word, 962.
Feudal castle, description of a, 967.
Feudal incidents, 101.
Feudal relation, the, how dissolved, 698.
Feudal system the, chapter ii, p. 80; condition of the people under, 14; in France, 19, 20, 23, 33, 78; analogies of, to Roman institutions, 111; to what countries confined, 112; name misapplied, 112; society under, 114; the clergy under, 119; character of, in France, 126; causes of subversion of, 164; intrinsic decay of, 171; results of, 177; in Switzerland, 382: in England, 543, 583; subinfeudation an essential to, 965; effect of, on France, 966.
Feudal tenure, system of, 93, 98; in England, 525.
Feuds, or fiefs, nature of, 962; allodial estates changed into, 963, 964; in England, 543.
Feuds, family, 218, 230, 347. See also Wars, private.
Fief, ceremony of conferring a, 99. See also Feuds and Feudal System.
Field of March, the, 133, 134, 417.
Fieschi family, the, 256.
Firma del derecho, process of, 341.
Fiscalini, 121.
Fiscal lands, 91.
Flagellants, the, 756.
Flanders, 35, 51; manufactures of, 772, 773; trade with England, 774; importation of weavers from, 775.
Flemings, the, 72.
Fleur-de-lis, the, used as a heraldic device, 115, note.
Florence, concession of, to the empire, 227; early record of, 232; polity of, 233; its nobility, 235 et seq; war of, with the Holy See,

243; anarchy and revolutions in, 244–246; war of, against Mastino della Scala, 248; revenues, population, and boundaries of, 248, 249; conquest of Pisa by, 249; resistance of, to robber bands, 273; history of, 293; wealth of, 295, note.
Folkland, 525, 1044.
Fontenay, battle of, 920, 921.
Forest laws, in England, 689.
Fortescue, Sir John, quoted, 691, 703, 1041.
Fortification, art of, 213, 378.
Foscari, Francesco, 269.
Fourteenth century, the, in England, 711, 712.
France, history of, chapter i, p. 1; weakness of early kings of, 5; separation of, from the empire, 13; cession of Normandy, 17; great vassals of, 17, 18; limited power of the throne, 18; under the Capets, 19; rivalry of, with England, 20; possessions of England in, 20; increase of its domain, 33, 35; first lasting foreign war of, 33; wars of, with England, 39 et seq., 49; reform of its government, 43; condition of, after Poitiers, 44; cession to England, 45; change in political condition of, 51; new features in government of, 65; consolidation of, 78; character of feudalism in, 126, 966; royal revenues of, 129, 132; growth of the royal power, 165, 950; relations of, with Rome, 497, 499; Norman incursions into, 920; taxation in, 939, 954; legislation in, 976, 954; judiciary of, 978; distinction of races in, 1055.
Franc-fief, 116.
Francis, St., of Assisi, 459.
Franciscans, the, schism among, 483.
Franconia, extinction of the duchy of, 360.
Frank-almoigne, 119, 410.
Frankfort, Council of, 427.
Frank-pledge, 521, 523, 524.
Franks, the, 350, 896; partition of Roman lands by, 931; the Salian and Ripuarian, 932; numbers of, 943.
Fratricelli, the, 483, note.
Fredegonde, 4, 908.
Frederick I, Barbarossa, 32, 194, 355, 451.
Frederick II, 205–207, 210, 357.
Frederick III, 367, 405, 496.
Freedom of speech, in Parliament, 651.
Freemasonry, 804, note.
Freemen, class of, 120, 968; Anglo-Saxon, 1005, 1013.
French language, the, change to, from Latin, 745, 865; use of, in England, 879, 880, 1122; Celtic words in, 937; where spoken, 941; become national, 947.
French literature, early, 863, 869.
Frérage, 104, 105.
Froissart, on English affairs, 634, note.
Fueros, the, 304, note, 306.
Furniture, house, 799.

Gabrielli of Agobbio, 238.
Gallantry, a principle of knighthood, 834.
Gallican Church, the, liberties of, 498.
Gallows, distinctions in forms of, 118, note.
Game laws, 539, 766.
Gaul, invasion of, by Clovis, 2; clergy of, 3; conquest of, by Franks, 81; expulsion of Romans from, 895; partition of Roman lands in, 929; position of Roman inhabitants, 933; people of, 936; municipal institutions in, 980; taxation in, 982.
Gavelkind, law of, 364, 561.
General Privilege, the, of Aragon, 336, 337, 345.
Generals, 274; first of, in modern times, 275.
Genoa, war of, with Pisa, 250; early history of, 251; decline of, 255; government of, 255; colony of, in the East, 252; defeat by Venice, 255; siege of, 256; loss of independence by, 258; first Doge of, 257; its history, 293, 779–781.
Gentleman, character of, 846.
Geoffrey of Monmouth, 867, 868.
Gerbert, 750.
Germany, history of, chapter v, p. 350; founding of the monarchy of, 13; state of ancient, 80; the empire, 125; relations with Lombard cities, 193; name of, 227; contest with the Holy See, 353; the crown made elective, 354,

358; imperial domain of, 371; its judicial system, 374; its extent and dissolution, 376; relations with the papacy, 496; prosperity in, 793; first missionaries to, 909; institutions of, 928.
Gerohus, theory of, 453.
Ghent, 72, 74, 773.
Ghibelins. See Guelfs and Ghibelins.
Gibbon, cited, 738, note, 820, note, et passim.
Giovanni di Vicenza, Fra, 220.
Girard, 110.
Glass, early use of, 799.
Gloucester, the Duke of, 63, 628 et seq., 718, 724.
Gnosticism, Templars accused of, 924–926.
Godfrey of Boulogne, 29.
Gonfalonier of Justice, the, 236. See Bannerets.
Gonzaga family, the, 225, 248.
Granada, conquest of, 348.
Granson, battle at, 73.
Gratian, 456.
Great Company, the, 273.
Greek Church, the, 820, 827, notes.
Greek Empire, the, 7, 9, note; provinces of, in Italy, 186, 187; history of, 387 et seq.; degeneracy of, 391; revival of, 395; conquest of, by Moguls, 403; partition of, 400, 401; fall of, 402, 403, 889; literature in, 890.
Greek language, the, 887.
Gregory I, 424.
Gregory II, 910.
Gregory VII, 27, 442, 448, 449.
Gregory IX, 209.
Gregory of Tours, 760, 762, 898, 903, 1114.
Grimaldi family, the, 256, 258.
Grimoald, 5.
Grosstete, Robert, Bishop, 467, note.
Guarnieri, Duke, 273.
Guelfs and Ghibelins, 203, 204, 208, 218–226, 232, 241, 256, 265, 283, 285, 293, 294, 355, 357, 481, 872; name of Guelf inherited by the house of Brunswick, 356.
Guesclin, Bertrand du, 49, 313.
Gui de Lusignan, 28.
Guidi, Counts of, 248.
Guienne, claim of England to, 34; insurrection in, 66.
Guilds, in Lombard cities, 192; in English towns, 587; origin of communes, 989.
Guiscard, Robert and Roger, 187, 188.
Guizot, his candour, 805, note, 846, note; quoted, 905 et passim.
Gulielmus Pictaviensis, cited, 19.
Gunpowder, 279; overthrew the institution of chivalry, 845.
Gunther, 883.

Habeas corpus, writ of, 552.
Hair, distinction of rank by, 958.
Hamburg, 777.
Hanno, Archbishop, 353.
Hanseatic Union, the, 370, 777.
Hapsburg, house of, 362, 367.
Hardouin, Ville, 869.
Haro family, the, 312.
Hastings, battle of, 530.
Hastings, minister to Edward IV, 69.
Hawkwood, Sir John, 274.
Haxey, Thomas, 630.
Hector, 831, note.
Henricians, the, 824, note.
Henry, Count of Champagne, 840.
Henry II of England, 20, 106, note, 472, 1054.
Henry III of England, 464, 468, 553 et seq., 700.
Henry IV of England, 57, 634, 644.
Henry V of England, 57 et seq.; reputation of, 646.
Henry VI of England, 647, 715, 717.
Henry I of Germany, the Fowler, 351.
Henry II of Germany, 185.
Henry III of Germany, 351, 352, 441.
Henry IV of Germany, 353, 442, 443.
Henry V of Germany, 368, 445.
Henry VI of Germany, 356.
Henry VII of Germany, 226, 364.
Henry II of Spain, 312, 313.
Henry IV of Spain, deposition of, 315.
Henry the Lion, 356.
Henry the Proud, 354, 355.
Heptarchy, the Saxon, 506, 1000.
Heraclius, 387, 391.
Heraldry, symbols of, 115.
Hereditary succession, 87 et seq.; in feuds, 97; to the throne, 316, 325, 337; in Germany, 351 et seq., 354, 357, 358, 949; of the Khalifs, 392; in England, 508, 564, 668,

669, 1059; to the imperial title, 912, 949.
Hereford, the Duke of, 632.
Heresy, suppression of, 22, 26, 640, 641, 819.
Hereward, 533, note.
Heribann, 122.
Heriot, 102, 529.
Hermandad, 331.
Hildebrand, 442.
Hincmar, Archbishop, 429, 899; quoted, 134.
History, philosophy of, 732.
Honorius III, 205, 206.
Honour, the spirit of, 829.
Horticulture, 809.
House of Commons. See Commons and Parliament.
House of Lords. See Lords and Parliament.
Hume, David, his history, 691, 693, 695.
Hundred, the division of, 514; court of, 1012.
Hungarians, the, 15.
Hungary, history of, 379; war of, against Venice, 254, 255.
Hunniades, John, 380, 381.
Hunting, 765; by the clergy, 766.
Huscarles, 173.
Huss, John, 378, 493, 828.
Hussites, war of the, 378.

Iconium, kingdom of, 400.
Ilyan. See Julian, Count.
Impeachment, by Parliament, 624, 1065.
Imperial chamber, the, 374.
Infangthef, 155.
Ingulfus, cited, 806, 853.
Innocent III, 22, 200, 411, 461, 462, 464, 467, 826.
Innocent IV, 209, 467.
Inquisition, the, seed of, 22.
Insensati, the, 908.
Interest, 787.
Interregnum, the grand, 358.
Intestates, estates of, 410.
Investitures, of laymen, 442.
Ionian Islands, the, 260.
Ireland, grant of, to Henry II, 451.
Irene, the Empress, 910.
Irnerius, 848.
Isabel of Bavaria, 54.
Isabella of Castile, 315, 347.
Iscanus, Joseph, 883.
Isidore, publication by, 428.
Italian language, the, change to, from Latin, 746, 870.
Italy, history of, chapter iii, p. 181; governed by exarchs, 6; division of, 181, subjected to the Germanic body, 186: three great events in the history of, 186; provinces of the Greek Empire in, 186, 187; source of its weakness, 199; republics of, 207; most honourable period of, 211; age of letters and art in, 220; rise of large states, 221; princes in northern, 225; French claim to, 226; quadruple league of, 291; contest of, with Turks, 292; loss of liberty in, 297; first prince in, 298; progress of luxury in, 790, 792; cultivation of, 808, 809.
"Ivanhoe," house of Cedric in, 1119.

Jaca, state of, 304.
James I of Aragon, 309.
Jane, princess of France, 35, 36, 38; her son, 43.
Janizaries, 406.
Jerome of Prague, 378.
Jerusalem, kingdom of, 28, 30–32, 206, note; laws of, 869.
Jews, the, 130, 140, 545, 762, 787.
Joan of Arc, 61 et seq., 65, note, 927.
Joanna, Princess, 315.
Joanna I of Naples, 285.
Joanna II of Naples, 288.
John I of Aragon, 343.
John II of Aragon, 335.
John of England, 21, 454, 545; proceedings against, 979.
John the Good, of France, 40, 43.
John II of Spain, 314.
John VIII, Pope, 434.
John XXII, Pope, 481 et seq.
John XXIII, Pope, 488.
John Sanspeur of Burgundy, 54 et seq.; murder of, 56.
Joinville, Sire de, 33, note, 157, 840.
Jubilee, the, 476 and note.
Judicial combat. See Trials.
Julian, Count, 993; question of his existence, 994.
Jurisdiction, right of, in France, 152; degrees of, 155; royal, 159, 978; in Spain, 329; in England, 530; of Saxon kings, 1024, 1027; of the chancellor, 1094; separa-

tion of civil and ecclesiastical, 1050; of the Church, 469.
Jurisfirma, process of, 341.
Jurisprudence, in Gaul, 85; arising from feudal tenures, 109; French, 161; Saxon and Norman, 561; commercial, 783.
Jury, trial by, 518, 1103; first form of, 1028, 1032, 1042; link between the ancient and modern principles, 1039.
Jus protimeseos, the, 104.
Justice, administration of, in England, 514, 559, 579; sale of, 546; by the hundred court, 1022; by the king's court, 1024, 1055; by county courts, 1073; in France, 978; in Germany, 374; by the Church, 414.
Justiciary, office of, 339, 558, note.
Justinian, code of, 848, 849, 851.

Karismians, the, 401.
Kings, law for, 557; right of, 725; authority of, 951; growth of power of, in France, 89; prerogative of, in England, 1105; allegiance to, 1107.
King's Peace, the, 1061.
Knight-errantry, 839.
Knighthood. See Chivalry.
Knight's fee, a, 831.
Knights, of the Teutonic order, 31; of St. John, 31, 308; Templars, 31, 308; their fate, 923; evidences against them, 924–926.
Koran, teachings of the, 388, 389.

Labourers, comparative wages of, 814.
La Cerda, Infants of, 311, 313, 325.
Ladislaus of Hungary, 380, 381, note.
Ladislaus of Naples, 287.
Læti, grants to the, 111.
Lambertazzi, Imilda de', 218.
Lancaster, Duke of, 613 et seq., 628 et seq.
Lance, definition of a, 271, note.
Lando, Michel di, 245, 246.
Lands, distinction in the nature of, 125, 525, 1044; grants of, 805; reclamation of waste, 806, 807; rent of, 808.
Land tenure, 82; in England, 525 et seq., 541, 1044; changes in, by William I, 1050.
Lanfranc, Bishop, 534, note.
Langland, William, 869.
Langton, Stephen, 551.
Language, inferences from, 937.
Languedoc, 21, 22; language and poetry of, 863, 864.
Lara family, the, 311.
Latin language, the, in the provinces, 738; changes in, 739; quantity and accent in poetry, 743, 883; ceased to be living, 745; familiar use of, 882; discovery of works in, 886; aggressive, 937.
Law, early codes of, 110, 111; earliest local customary, 304, note; English, 562, 597, 682, 1092, 1097; canon, 456; commercial, 783; maritime, 783; sumptuary, 792; study of civil, 848; the Salic, Ripuarian, Visigothic, and Burgundian, in France, 932, 933; Roman, in France, 946, 948; the Theodosian code, 982, 983; code of Justinian, 848, 849, 851.
Law of defiance, the, 372.
Layamon, work by, 878.
League of the Rhine, the, 370.
Learning, in England, 542; decline of, 746; influence of religion on, 751; revival of, 856, 882, 891; decline of, in the sixth century, 1114.
Leet, the, 1022.
Legates, papal, 450.
Legislation, 132; in France and England compared, 139; by the crown, 140; in Spain, 316, 345; in England, 547, 607; first, for the sea, 783, 784; by assembly in France, 956; sanction of the people to, 977; under Norman kings, 1047; participation in, by the clergy, 416.
Legislature of Charlemagne, the, 976.
Legnano, battle of, 197, 211, 356.
Leo IX, 188, 436.
Leon, kingdom of, 303, 308, 388.
Liberty, loss of, 223; progress of, in England, 695, 730.
Libraries, 884.
Lidus, status of the, 971, 1011.
Ligny, Count de, 64 and note.
Lingard, Dr. John, cited, 996 et passim.
Literature, ruin of, 734; favourable conditions for, 735; influence of the Church on, 736; preservation of, 751; influence of, on society, 847.

Lodi, destruction of, 193.
Lollards, the, 827.
Lombard, Peter, 853.
Lombard League, the, 196, 203.
Lombards, the, 6, 7.
Lombardy, 189, 199, 207; cause of its strength, 211; cities of, 222; subjugation of, 194; money-lenders of, 788.
London, 589; government of, 1075; first mayor of, 1077; sokes of, 1077; its population, 1078.
Longchamp, William, 550.
Lords, House of, 573, 666–668; report of committee of, on the dignity of a peer, 1047, 1049, 1051, 1055, 1065, 1072, 1080, 1082, 1086.
Loria, Roger di, 284.
Lothaire I, 12, 13.
Lothaire the Saxon, Emperor, 354.
Lothaire of Lorraine, divorce of, 430.
Louis I, the Debonair, 11, 419, 429.
Louis the Germanic, 12, 13.
Louis VI of France, 19, 20.
Louis VII of France, 20, 21.
Louis VIII of France, 21, 23.
Louis IX, Saint, of France, 23, 24, 32; "Establishments" of, 140, 141, 157, 818; publishes the Pragmatic Sanction, 465.
Louis XI of France, 66 et seq., 71, 74, 75, 349, 385, 497; encouragement of the middle class by, 992.
Louis of Bavaria, Emperor, 481, 482.
Louis of Hungary, 380.
Loyalty, 179, 837.
Lubec, 776.
Luna, Alvaro de, 314.
Lupus, Abbot of Ferrières, 1114.
Luxembourg, house of, 364, 378.
Luxembourg, John of, 64.
Luxury, progress of, 790; laws to restrain, 792; compared with former simplicity, 813.
Lyons, 35; Council of, 210.

Magna Charta, 550, 695, 699, 1071.
Magna Charta of Aragon, 337.
Magnates, use of the word, 1070.
Magnetic needle, the, discovery of, 782; use of, in navigation, 783, note.
Maitland, Dr., on the dark ages, 1116.
Malamocco, 259.
Mandeville, Sir John, 881.
Manfred, Emperor
Manicheism, 819–8
Manifestation, pro
Mans, kingdom of
Manufactures, 768,
Manumission, 123.
Mapes, Walter, 11
note.
Marcus Aurelius,
Margaret of Anjo
726.
Marozia, 184.
Marriages, of war
116; of clergy, 4
pediments to, 46
545, 551; of serfs
Marshals, jurisdict
Martin V, Pope, 4
Mary of Burgundy
Masdeu, quoted,
Mathematics, stud
Matilda, Countess
popes, 201.
Maximiliam I of C
376, 386.
Maximilian, King
77.
Mayors of the pal
Mecca, capture of,
Medici family, the
Meloria, battle of,
Mendicant orders
458.
Mentz, Diet of, 4
Mercenary troops,
175.
Merchants, standi
of, 777, 786.
Mercia, 1002.
Merovingian peri
division of, 907.
Mesnedaries, 336.
Middle ages, the
society and lite
seq.
Milan, 189, 190, 1
tion of, 195; reb
212, 216, 223–225
sessions by, 26
Sforza family ir
Military orders, t
Milner, Dr., 821,
tory of Winche
Milton, John, qu
Ministerials, 109.
Miracles, mediæv
Missi Regii, 153.
Mocenigo, the D

Moguls, eruption of the, 401, 402.
Mohacz, battle of, 379.
Mohammed II, 381, 404, 406.
Mohammedanism, rise of, 387. See Saracens.
Monasteries, spoliation of, 17; exempted from authority of bishops, 429, 760; land grants to, 805.
Money, right to coin, in France, 126; in England, 128; depreciation of, in France, 130; debased, 147; scarcity of, 770, 775; relative values of, 810; table of, 813.
Money-dealers, 787, 788.
Monk of Silos, the, 993, 994.
Monteil, M., quoted, 967.
Montfort, Simon de, 23.
Moors, the, in Spain, 303, 308, 309, 348; cause of their invitation into Spain, 993.
Moralities, influence of, 712.
Morals, state of, 764; improvement of, 816.
Morat, battle at, 73.
Morgarten, battle of, 383.
Mühldorf, battle of, 482.
Municipalities. See Cities.
Muratori, 181, note; quoted, passim.
Murcia, kingdom of, 309.
Murder, punishment for, 84; by sovereigns, 330; compensation for. See Weregild.

Naples, 186, 188, 221, 282; succession to the throne of, 284, 298; struggle for the crown of, 555.
Naples and Sicily, kingdom of, 205.
Navarette, battle of, 313.
Navarre, 35, 36, 304.
Neri, the, 219.
Neuss, siege of, 72.
Neustria, 5, note, 906, 907.
New Forest, devastation of, 539.
Nicephorus Phocas, 397.
Nicopolis, battle of, 402.
Nivernois, Duke de, memoir by, 3, note.
Nobility, origin of, 90, 114 et seq.; first French king to grant, 117; in Venice, 262, 264; in Spain, 335; in Germany, 360, 370–372; in Switzerland, 382, 384; in England, 509, 574, 1005; the inferior, 843; among the Franks, 957; in the Roman provinces, 983, 984; the theory as to, in England and France, 90, 1054; foundation of, in feudal and later times, 1090; among Danes, 1009.
"Noble Loiçon, La," quoted, 823, 824.
Nominalists, 860.
Norfolk, Duke of, 632.
Norman conquest, the, 530; effect of, on the English language, 879.
Normandy, cession of, 17, 921; Dukes of, 20; pilgrims from, 187.
Normans, the, 16, 17, 1054.
Northumbrian kings, the, 1002.

Oaths, dispensations from, 463.
Obertus, 110.
Ockham, 483, 859, note.
Ockley, his history, 391, note.
Odo, Archbishop, 421, 996.
Offa, King, 1002.
Oleron, laws of, 784.
Ommiades, the, 392, 393.
Ordeal, trial by, 561, 753, 754, 1031.
"Order of Chivalry, The," poem, 839.
Ordinances, as distinguished from laws, 609.
Ordinances of Wisbuy, the, 784.
Orleans, contest of, with Burgundy, 57 et seq.; siege of, 61.
Orleans, the Duke of, 54.
Orleans, house of, its claim to Italy, 226.
Ostrogoths, the, 1; end of dominion of, 6.
Otho I, the Great, 183, 351.
Otho III, 184.
Otho IV, 357.
Ottocar of Bohemia, 362.
Outfangthef, 155.
Oxford, provisions of, 556.
Oxford, University of, 853, 855.

Palgrave, Sir Francis, 1005; quoted, 1021, 1032, 1083.
Papacy, the, power of, chapter vii, p. 407, 184; struggle of, with the empire, 186, 353; claim to southern provinces, 188; temporal power of, 7, 200, 205, 227; act of usurpation by, 210; war with Florence, 243; origin of, 422; election of bishops of Rome, 440; noonday of its dominion, 456; temporal authority of, 478, 485, 501; beginning of its decline, 480; removal of its seat to Avignon, 480, 486; right of, to confirm elec-

tions, 482; contest of election, 486; question of absolutism in, 488; resistance of England to, 494; claim of, to dispose of the empire, 910 et seq.; party of the. See Guelfs.
Paper, invention of, 883.
Papyrus, 749, note.
Paris, insurrection in, 52; massacre at, 56; made seat of Parliament, 160; municipality of, how developed, 990; population of, 1079.
Paris, University of, 852, 855.
Parliament of England, the, constitution of, 573; division of, into two Houses, 599; powers of, 610, 646; privilege of, 649; members of, 659, 1065, 1080; franchise for borough representation in, 1073, 1082; right of summons to, 1087; under Norman kings, 1047; wages of knights and burgesses, 660.
Parliaments, in France, 138; of Paris, 160, 162, 500.
Pastoureaux, 755.
Paterins, 821.
Patrician, title of, 9.
Paulicians, the, 820.
Pavia, burned, 185.
Peacock, the, homage to, at festivals, 841.
Peasantry, the English, 510, 511, 705; insurrections of, 711, 713.
Pecock, Bishop, 827, note.
Peers, in France, 161; creation of, 668, 672; what constitutes, 1087, 1088, 1092. See Lords.
Pembroke, Earl of, 551, 699.
Penance, 763.
Pepin Heristal, 5, 908.
Pepin the Short, 6.
Perjury, prevalence of, 765.
Perrers, Alice, 613, 616.
Persecutions, 762.
Persia, conquest of, 391.
Pestilence, the greatest recorded, 44.
Peter, St., claim for, to lands, 448, 449, 451; chair of, 999.
Peter IV of Aragon, 343.
Peter the Cruel, 312.
Peter the Hermit, 27.
Petrarch, 875, 885, 888: identity of Laura, 1120; quoted, 1121.
Petronilla, Queen, 332, 345, note.
Pfahlbürger, 370.
Pheasant, the, at knightly festivals, 841.
Philip Augustus, 454.
Philip the Fair, 33,
Philip the Good, 7
Philip the Long, 3
Philip of Valois, 3
Philosophy, study
Picards, 821.
Piccinino, Nichola
Piers Plowman's quoted, 759.
Pilgrimages, 763.
Piracy, 507, 785.
Pisa, Council of, 249 et seq., 780.
Pisani, Vittor, 253,
Pius II, 406, note,
Podestà, office of, 256.
Podiebrad, George
Poetry, sudden i Provence, 863; 864; of Normand 868; of Spain, 8 of England, 879;
Poggio Bracciolin
Poitiers, victory o battle of, 42, 43.
Polemics, influenc
Police service, 81
Poll-tax, the, 618,
Polygamy, in Cha 460.
Popes. See Papa
Porcaro, Stephen,
Præmunire, statut
Pragmatic Sancti Louis, 465; of B
Prague, Universit
Prerogative, the
Prices, 810.
Primogeniture, l 364.
Princes in the To
Principalities, Ger
Printing, inventio
Prior, office of, 2
Private Wars. Se private.
Privilege of Unio
Procida, John of,
Procopius, cited,
Provence, 14, n France, 78; po 900.
Provisors, statute
Psellus, Michael,
Purveyance, 687.

Quadrivium, the, 852.

Rachimburgii, the, 133.
Ragusa, 259.
Rank, distinctions of. See Ceorls, Freemen, Nobility, Villeins.
Ravenna, exarchate of, 7.
Raymond VI of Toulouse, 22.
Realists, 860.
"Recopilación," the, 322.
Regency, 715.
Regnier of Anjou, 289, 299, 335.
Regnomeris, 3, note.
Relics, reverence for, 75.
Reliefs, 102, 105, 529.
Representative government, 578.
Reprisal, law of, 785.
Republics compared with monarchies, 247.
Retrait lignager, 104.
Rhine, project for uniting the Danube with the, 10.
Richard I of England, 20, 32, 452, 831, note, 867.
Richard II of England, 50, 615 et seq., 717; character of, 621; deposition of, 633.
Richard III of England, 729.
Richard, Emperor-elect of Germany, 358.
Ricoshombres, 335.
Rienzi, Nicola di, 230.
Ripuary law, the, 83, 933.
Rivoalto, 259.
Robbery, 273, 702, 769, 818.
Robert of Anjou, King of Naples, 225, 226, 256.
Robert of France, excommunication of, 432.
Roderic of Spain, 993.
Rodolph of Hapsburg, 226, 227, 360, 362.
Rodolph of Swabia, 353.
Rollo, 17.
"Roman de la Rose, The," 868.
Roman Empire, the, fall of, 1; partition of lands in, 81, 929; literature of, 734.
Romance language, the, 862.
Romano, Eccelin da, 208, 221, 223.
Romans, status of, in provinces, under the Franks, 83, 930.
Rome, obscure period in the history of, 183; rebellion in, 184; sovereignty of the popes over, 202, 228; weak government in, 229; private feuds, 230; under Rienzi, 230; under the bannerets, 231; relations with the Church, 231; under signiors, 231; claim of its bishops to supremacy, 998.
Roncaglia, Diet of, 195.
Roscelin, 857, 859.
Rousillon, province of, 349.

Safeguard, the personal, 964.
St. Albans, 592; battle of, 722, note.
St. George, company of, 276.
St. Marc, 182, note.
St. Palaye, memoirs of, 846, 847, notes.
St. Pol, constable of, 69.
Saints, golden age of, 901; imaginary, 757; worship of, 757, 758.
Saladin, 31, 839.
Salerno, 186, 188.
Salian Franks, the, 2.
Salic estates, 82.
Salic law, the, 36 et seq., 332, 565, 932, 933.
Salutato, Colluccio, 885.
Sancho IV, 311, 312, 325.
Sanctuary, privilege of, 760.
Sanseverini, the, 287.
Santiago, order of, 308.
Sanuto, quoted, 268.
Saracens, the, 6, 15; treatment of pilgrims by, 26; weapons of, 30; in conflict with Normans, 187; in Spain, 302, 305; empire of the, 378.
Saragossa, 305.
Sardinia, 249, 251, 332.
Savigny, cited, 945.
Saxons, conquest of, by Charlemagne, 8; butchery of, 10; war of, against the empire, 353; cause of wars of, 909.
Saxony, house of, 351, 354.
Scala, house of, 224–226, 248, 267.
Scali, Giorgio, 246.
Scanderbeg, 406.
Scandinavia, 507.
Schismatics, 827. See Heresy.
Scholasticism, 857; recent study of, 859; a cause of scepticism, 860.
Schoolmen, the, 858.
Schools, public, in France, 851.
Scots, auxiliaries of France, 60.
Scotus, John, 750, 860, note.
Seljukians, the, 398, 400.
Sempach, battle of, 385.
Senate, the, in Gaul, 983, 984.
Senator, use of the word, 983, 984.
Senator of Rome, the, 229.
Septimania, 3, 6.

Serfs, 122. See Slavery and Villeins.
Servitude, 120.
Seville, 309.
Sforza, Attendolo, 281, 288–290, 292.
Sforza, Ludovico, 293, 300.
Sheriffs, power of, 665.
Sicilian Vespers, the, 283.
Sicilies, the two, 289, note.
Sicily, 187, 188, 200, 205, 283, 288.
Siena, 809.
Siete Partidas, code of the, 310, 311, 317, 325.
Sigismund, Emperor, 378–380, 493.
Silk, manufacture of, 782.
Silvester II, Pope, 750.
Simony, 438.
Sismondi, 182, note; quoted, 896, 902, 904, 914.
Sithcundmen, 528, 1007.
Sixhœndmen, 1008.
Slavery, under the feudal system, 121; the poor sold into, by themselves, 971; passage of cultivators into, 972; theory as to decline of, 973.
Slaves, traffic in, 770.
Slavonians, the, 8, 9, 15.
Socage, 512, 568, 570, 1013, 1014.
Society in Europe, chapter ix, p. 732.
Socmen. See Socage.
Soissons, battle of, 2; vase of, 88, 950.
Sokes of London, the, 1077.
Soldiery, of Italian states, 270; mercenary. See Mercenary Troops.
Soprarbe, country of, 304.
Sorel, Agnes, 62, note.
Southampton, Norman houses at, 1118.
Southey, Robert, quoted, 993; his "Joan of Arc," 927.
Sovereigns, election of, in France, 136.
Spain, history of, chapter iv, p. 302; chartered towns of, 306; the Moors in, 391, 993; relations of, with Rome, 496.
Spanish language, the, 870.
Spanish March, the, 8.
Spinola family, the, 256–258.
Squires, 118.
Star Chamber, Court of, 1104.
States-General of France, first assembly of, 142, 478; weakness of, 149.
Stephen of England, reign of, 545.
Strozzi, Tomaso,
Subinfeudation, 1
Subpœna, writ of
Suevi, the, 1.
Suffolk, the Duke of, 648.
Suffolk, Michael of, 622, 626.
Suffrage, popular, 581 et seq., 661 concerning, 101
Superstitions, 752
Surnames, adopti
Swabia, house of tion, 222; that
Swiss, victory o bravery, 385.
Switzerland, histo cantons of, 383;
Syagrius, 2.

Tabor, Mount, 37
Taborites, the, 37
Tacitus, accuracy
Taillefer, 866.
Tallage. See Ta
Tarento, principal
Tartar. See Turl
Taxation, 51, 52; 66, 547, 603; b 129, 132, 142, 1 states, 272; in S gy, 466, 477; an land, 547, 552, 729, 1081; in G
Tenth century, th
Terence, metre o
Testry, battle of,
Teutonic order,
Thanes, 510, 511 witenagemot, 1
Theodebert, 900.
Theodora, 184.
Theodoric, 737.
Theodosian code
Thierry, M., 4, 9
Thomas Aquinas
Thorp, Thomas,
Throne, successi position, 635; See Hereditary
Timur the Tarta
Tithes, 410; the posed first gra
Tithing, respons
Tithing-men, 51
Toft, a, 768, not
Togrol Bek, 397

Toledo, loss of, by the Moors, 305.
Tonsure, the, 469.
Toro, battle of, 316.
Torre, house of, 224.
Torture, judicial, 694.
Toulouse, fall of the house of, 22, 23.
Toulouse, floral games of, 864.
Tournaments, 841, 842.
Tours, battle of, 6.
Transoxiana, 403.
Transubstantiation, doctrine of, 859.
Trastamare, house of, 312, 313.
Treason, trials for, 694.
Treviso, 267.
Trials, by combat, 154, 156, 158, 160, 753, 1029, 1031; by ordeal, 753, 1031; by jury, see Jury; in civil and in criminal cases, 1028.
Tribunes, last of the Roman, 230; in Venice, 261.
Tributary, status of the Roman, 971, 974.
Trivium, the, 852.
Trochaic verse, 744.
Troubadours, the, 863; their poetry, 864.
Trouveurs, the, 868.
Troyes, Treaty of, 59.
Turin, Treaty of, 255.
Turks, the, 380, 394, 397; converted to Islam, 397, 401, 405.
Tuscan league, the, 202.
Tuscany, government of, 232.
Twelfhyndman, the, 1008.
Tyler, Wat, rebellion of, 711, 713.
Tyrants, in Italy, 247.

Uberti, Farinata degli, 218.
Ugolino, Count, 250.
Uladislaus, of Poland, 380.
Universities, 848; golden age of, 855; special excellences found in each, 856; privileges of members, 856.
Urban II, 27.
Urban VI, election of, 486.
Urgel, Count of, 333.
Usury, 786–789.
Uzzano family, the, 293, 295.

Vacarius, Stephen, 850, 854.
Valencia, kingdom of, 309, 346.
Vandals, the, 1, 376.
Varangians, the, 535.
Varna, battle of. See Warna.
Vase of Soissons, the, 88, 950.
Vassals, duties of, 99; dependence of, 542; aids due from, 546.
Vaudois, the. See Waldenses.
Vavassors, 118.
Venedic, the, 376.
Venice, early history of, 258; government of, 260; war with Genoa, 252 et seq.; acquisitions of territory, 267, 269; overthrow of, 267; wealth of, 268, 269, note, 770, 780, 781.
Verdun, Treaty of, 13, 350, note.
Verme, Jacopo del, 276.
Viana, Prince of, 335.
Vicenza, ceded to Venice, 268.
Villeins, status of, 122, 706, 974; marriage of, 976, 1011, 1013; regardant and in gross, 1109.
Virgin, stories of the, 758.
Visconti family, the, 224, 225, 247, 258, 267–269, 481; Gian Galeazzo, 225, 226, 258, 267.
Visigoths, the, 1, 3, 302.
Voltaire, 133, note.
Volterra, 809.
Von Hammer, M., quoted, 924, 925.

Wace, 866, 973.
Wages, comparative value of, 814.
Waldenses, the, 822.
Wapentakes, 515.
War, engines and weapons of, 213, 278; changes in methods of, 270, 272; naval, 785; ameliorations of, 837; private, 128, 372, 522, 568, 701, 785, 818; lawfulness of private, 1061.
War of the Public Weal, the, 66, 67.
Wardship, 106, 541, 545, 551.
Warna, battle of, 380.
Wars of the Roses, the, 724, 778.
Welf family, the, 355. See also Guelf.
Wenceslaus of Germany, 366.
Weregild, the, 84, 129, 510, 522, 533, note, 587, note, 957, 958, 1008, 1010, 1108.
Western Empire, the, limits of, 9; partition of, 13, 14.
White Caps, brethren of the, 755.
White Company, the, 274.
Wibelung, town of, 355.
Wicliff, John, 495, 712, note, 881; followers of, 827.
Wilfrid, Bishop, 426.
William of Tyre, quoted, cited, 29, note, 30.
William the Conqueror, 531, 539 et seq.; laws of, 865; charter of, 1051.
Winchester, population of, 1079.

Winfrid, 426.
Winkelried, Arnold, 385.
Winton, statute of, 704.
Witchcraft, executions for, 825, note.
Witenagemot, the, 513, 1018, 1056.
Witikind, conversion of, 8.
Women, right of succession of, to fiefs and thrones, 73, 82, 108, note, 200, 332, 362, 565; respect for, 833. See also Salic Law.
Wool, tax upon, 604; staple of England, 773, 775; laws on, 775; manufacture of, 775, 776, 782.
Worsted, village
Wykeham, Bisho

Yeomanry, the E
York, the Duke
Yorkshire, devas
Young, Thomas,

Zeno, Carlo, 255.
Zimisces, John, 3
Zingis Khan, 401
Ziska, John, 378.
Zulpich, battle at

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